## Clerk's Stamp:

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COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

**EDMONTON** 

IN THE MATTER OF THE TRUSTEE ACT, R.S.A 2000, C. T-8, AS AMENDED, and

IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY CHIEF WALTER PATRICK

TWINN, OF THE SAWRIDGE INDIAN BAND, NO. 19, now known as SAWRIDGE FIRST NATION, ON APRIL 15, 1985 (the "1985 Sawridge

Trust")

**APPLICANTS** 

ROLAND TWINN, MARGARET WARD, TRACEY SCARLETT, EVERETT JUSTIN TWIN AND DAVID MAJESKI as Trustees for the

1985 Sawridge Trust;

**DOCUMENT** 

RESPONDING BRIEF OF THE OFFICE OF THE PUBLIC **GUARDIAN AND TRUSTEE ("OPGT")** 

ADDRESS FOR **SERVICES AND CONTACT** 

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COURT FILE NUMBER: 1103 14112

**COURT** COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE **EDMONTON** 

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TWINN, OF THE SAWRIDGE INDIAN BAND, NO. 19, now known as SAWRIDGE FIRST NATION, ON APRIL 15, 1985 (the "1985 Sawridge

Trust")

**APPLICANTS** ROLAND TWINN, MARGARET WARD, TRACEY SCARLETT,

EVERETT JUSTIN TWIN AND DAVID MAJESKI as Trustees for the

1985 Sawridge Trust;

**DOCUMENT** RESPONDING BRIEF OF THE OFFICE OF THE PUBLIC

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#### INTRODUCTION

- 1. The Office of the Public Guardian and Trustee (OPGT) opposes the application of the Sawridge First Nation (SFN) to intervene in two pending applications concerning the transfer of assets from the 1982 Sawridge Trust (the 1982 Trust) to the 1985 Sawridge Inter Vivos Settlement (the 1985 Trust), and the jurisdiction of the Court to amend the beneficiary definition of the 1985 Trust.
- 2. In doing so, the OPGT recognizes this Court's preference that its decisions in matters pertaining to the 1985 Sawridge Trust be informed by multiple perspectives. Nonetheless, the circumstances pertaining to the SFN application give rise to serious questions concerning its merit or value to the Court. The OPGT is obliged to raise these questions for the protection of the interests of the minor beneficiaries it has been appointed to represent.
- 3. The OPGT opposes the application on grounds that include:
  - a. The SFN has no direct interest in the proceedings warranting intervention;
  - b. The SFN would be unco-operative as an intervenor;
  - c. The SFN cannot, or will not, contribute any additional evidence relevant to the asset transfer issue;
  - d. The SFN's proposed position on the asset transfer issue lacks any air of reality;
  - e. The SFN' proposed position on the asset transfer would widen the issues between the parties impermissibly;
  - f. The SFN has already elected not to participate in the jurisdiction issue; and
  - g. The SFN's proposed position on the jurisdiction issue is unnecessary;

## **FACTS**

4. These proceedings concern the 1985 Trust, the origins of which are described in the September 12, 2011 Affidavit of Paul Bujold (the Bujold Affidavit), Chief Executor of

the Sawridge Trusts. The nature and purpose of the 1985 Trust was further described by the late Walter Patrick Twinn, former Chief of the SFN in his evidence at the trial of the constitutional challenge brought on behalf of the SFN and others to *Bill C-31*. Extracts of that evidence are attached as Exhibit "B" to the September 26, 2019 Affidavit of Darcy Twin.<sup>1</sup>

- 5. These affidavits, and Questioning thereon, show that the 1985 Trust was created, and the assets of the 1982 Trust were transferred to it, at the instance of the SFN. The SFN took these steps in order to protect those assets from what the SFN viewed as the unconstitutional imposition of members upon it by Canada pursuant to *Bill C-31*. As the SFN previously submitted to the Court in this proceeding, 1985 Trust was settled to preserve assets for the benefit of "members as defined under the *Pre-Charter Indian Act.*" But for these steps, those new members would have enjoyed a beneficial interest in the assets because they would have fallen within the beneficiary definition in the 1982 Trust.
- 6. The creation of the 1985 Trust and the transfer of assets to it were carried out with the assistance of highly qualified accountants and legal counsel to the SFN, including Maurice Cullity of Davies Ward and Beck, (subsequently Mr. Justice Cullity of the Ontario Superior Court of Justice).<sup>4</sup> The steps taken included:
  - a. The establishment of the 1985 Trust by Chief Twinn on April 15, 1985. The 1985 Trust defined beneficiaries as those who would qualify as members of the SFN pursuant to the *Indian Act* as it read on April 15, 1982. This was the date on which the 1982 Trust had been established.<sup>5</sup>
  - b. A resolution of the Trustees of the 1982 Trust (the Old Trustees) who were also the Trustees of the 1985 Trust. The Old Trustees and the 1985 Trustees were also the only members of SFN Chief and Council at that time. The resolution

<sup>&</sup>lt;sup>1</sup> Affidavit of Darcy Twin, filed September 26, 2019, Exhibit "B"

<sup>&</sup>lt;sup>2</sup> Excerpt from the Written Submissions of Sawridge First Nation, filed March 8, 2012, para. 8 [Appendix A, Responding Brief of the OPGT, filed October 25, 2019]

<sup>&</sup>lt;sup>3</sup> Affidavit of Darcy Twin, filed September 26, 2019, Exhibit "B"

<sup>&</sup>lt;sup>4</sup> Questioning of Paul Bujold, held May 27, 2014, p. 33-38 [Appendix B, Responding Brief of the OPGT, filed October 25, 2019]

<sup>&</sup>lt;sup>5</sup> Affidavit of Records of Sawridge Trustees, filed April 30, 2018, Document #SAW000039 [Appendix J, Responding Brief of the OPGT, filed October 25, 2019]

authorized the transfer of the assets held by them as Trustees of the 1982 Trust to themselves as Trustees of the 1985 Trust;<sup>6</sup>

- c. The acceptance of the transfer by the 1985 Trustees, dated April 15, 1985<sup>7</sup>
- d. A resolution of the Members of the SFN (then called the Sawridge Band) dated April 15, 1985, approving and ratifying the transfer;<sup>8</sup>
- e. A Declaration of Trust dated April 16, 1985 whereby the Old Trustees and 1985 Trusts declared that assets that they had held as the Old Trustees, they now held as 1985 Trustees.<sup>9</sup>
- 7. These steps were co-ordinated with a constitutional challenge to *Bill C-31* in the Federal Court of Canada by the SFN and others. <sup>10</sup> (If successful that challenge would have effectively prevented the imposition of the new members by Canada and left all questions of membership to the SFN.) Mr. Bujold stated that it was his information the intent of the 1985 Trust was to protect the assets pending the completion of the constitutional challenge. <sup>11</sup>
- 8. That challenge was ultimately dismissed in December 2009. At that time the Supreme Court of Canada refused leave to appeal the decision of the Federal Court of Appeal upholding the dismissal of the claim by the trial judge.<sup>12</sup>
- 9. The trial evidence of Chief Twinn and the evidence of Paul Bujold, based on information from Mr. Cullity, was that following the constitutional challenge the assets in the 1985

<sup>&</sup>lt;sup>6</sup> Questioning of Darcy Twin, held October 18, 2019, p.14, l.19-27, p.15, l.1-3 and Exhibit "C" [Appendix O and P, Responding Brief of the OPGT, filed October 25, 2019]

<sup>&</sup>lt;sup>7</sup> Questioning of Darcy Twin, held October 18, 2019, Exhibit "C" [Appendix P, Responding Brief of the OPGT, filed October 25, 2019]

<sup>&</sup>lt;sup>8</sup> Questioning of Darcy Twin, held October 18, 2019, Exhibit "D" [Appendix P, Responding Brief of the OPGT, filed October 25, 2019]

<sup>&</sup>lt;sup>9</sup> Questioning of Darcy Twin, held October 18, 2019, Exhibit "B" [Appendix P, Responding Brief of the OPGT, filed October 25, 2019]; Questioning of Paul Bujold held July 27, 2016, p. 19-20 and 23-26 [Appendix F, Responding Brief of the OPGT, filed October 25, 2019]

<sup>&</sup>lt;sup>10</sup> Questioning of Paul Bujold held July 27, 2016, p. 22, l. 1-16, p.23, l.24-24 and p.24, l.1-8 [Appendix F, Responding Brief of the OPGT, filed October 25, 2019]

<sup>11</sup> *Ibid* 

<sup>&</sup>lt;sup>12</sup> Sawridge Band v. Her Majesty the Queen, Congress of Aboriginal Peoples, Native Council of Canada (Alberta), Non-Status Indian Association of Alberta and Native Women's Association of Canada AND BETWEEN Tsuu T'ina First Nation (formerly the Sarcee Indian Band) v. Her Majesty the Queen, Congress of Aboriginal Peoples, Native Council of Canada (Alberta), Non Status Indian Association of Alberta and Native Women's Association of Canada, 2009 CanLII 69744 (SCC) [Authorities Tab 6, Responding Brief of the OPGT, filed October 25, 2019]

Trust would be rolled forward into a third trust created in 1986. There is no evidence how or why this might occur and no such merger has occurred or been attempted. In this application, the 1985 Trustees propose distribution of the trust assets to the beneficiaries, while the SFN wishes to argue the assets revert to the former 1982 Trust.

- 10. Mr. Cullity provided other assistance to the SFN in 1993-94 when the Department of Indian Affairs and Northern Development made inquiries concerning the Trusts, as referenced in Exhibit "C" of the Affidavit of Darcy Twin. Mr. Cullity responded to those inquiries on behalf of the SFN and took the position that Canada had no further interest in what the SFN had done with its monies once they had been transferred to the First Nation. The Crown ultimately took no action with respect to the 1985 Trust. The position taken by Mr. Cullity was subsequently affirmed by the Supreme Court of Canada in *Ermineskin Indian Band and Nation v. Canada*, which held: "Once a transfer is effected, the Crown's fiduciary obligations with regard to the funds in question must cease, as *it no longer has control over the funds and is not responsible for their management.*" (emphasis added). 13
- 11. The 1985 Trust has operated and administered the assets transferred to it since it was established. When these proceedings were commenced in 2011, the 1985 Trustees advised it would include seeking direction with respect to the asset transfer. The Trustees subsequently applied for a direction approving the transfer.
- 12. The SFN did not seek participatory rights to speak to the asset transfer issue either at the time the proceedings commenced or after the Trustees' specific application to approve the asset transfer. However, the SFN participated in, and supported, the approval of the asset transfer, and the specific terms of the August 24, 2016, Order approving the transfer (the ATO) in at least the following ways:

<sup>&</sup>lt;sup>13</sup> Ermineskin Indian Band and Nation v. Canada, 2009 SCC 9 [Tab 4, Brief of Sawridge First Nation, filed September 26, 2019]; Questioning of Darcy Twin, held October 18, 2019, p. 30, l.1-14 [Appendix O, Responding Brief of the OPGT, filed October 25, 2019]; Supplemental Affidavit of Records of Sawridge Trustees, filed April 30, 2018, Documents #SAW001879, #SAW001881, #SAW001885, #SAW001886, #SAW001892 and #SAW001893 [Appendix K, Responding Brief of the OPGT, filed October 25, 2019]

- a. The SFN was included in the 1985 Trustees' 2016 "with prejudice" proposal to settle the asset transfer issue by way of the ATO. The SFN had full opportunity to provide its comments and views to the Trustees and the parties on that proposal;<sup>14</sup>
- b. The proposal stated that the purpose of the ATO was to confirm "the 1985 Trust was the entity with which to deal." The SFN expressed its full support for the proposal stating: "It is the position of the Sawridge First Nation that this settlement offer is reasonable and resolves any possible concerns with respect to approval of the transfer of assets from the 1982 Trust to the 1985 Trust." 16
- c. Counsel for the SFN urged the OPGT to consent to the ATO and threatened the OPGT with costs in a related motion if it did not consent;<sup>17</sup>
- d. Counsel for the SFN questioned Mr. Bujold on his affidavit filed in support of the ATO and elicited evidence that:
  - i.) The purpose of the 1985 Trust was to protect the assets from individuals who might be "forced" on SFN as members; 18
  - ii.) The objective of SFN and SFN Chief and Council's in 1985 was to, *inter alia*, transfer the 1982 assets to the 1985 Trust; <sup>19</sup>
  - iii.) The 1982 Trust no longer exists;<sup>20</sup>
  - iv.) SFN had cooperated with the 1985 Trustees in providing documents relevant to the asset transfer and Mr. Bujold did not believe any additional documents relevant to the asset transfer exist;<sup>21</sup>
  - v.) Returning the assets to the 1982 Trust would be an enormous detriment to the beneficiaries.<sup>22</sup>

<sup>16</sup> Questioning of Darcy Twin, held October 18, 2019, Exhibit "G" [Appendix P, Responding Brief of the OPGT, filed October 25, 2019]

<sup>&</sup>lt;sup>14</sup> Questioning of Darcy Twin, held October 18, 2019, Exhibit "E" and "F" [Appendix P, Responding Brief of the OPGT, filed October 25, 2019]

<sup>15</sup> Ibid, Exhibit "F", page 2

<sup>&</sup>lt;sup>17</sup> Questioning of Darcy Twin, held October 18, 2019, Exhibit "G" [Appendix P, Responding Brief of the OPGT, filed October 25, 2019]

<sup>&</sup>lt;sup>18</sup> Questioning of Paul Bujold held July 27, 2016, p. 23, l.3-8 [Appendix F, Responding Brief of the OPGT, filed October 25, 2019]

<sup>&</sup>lt;sup>19</sup> Questioning of Paul Bujold held July 27, 2016, p. 23, l.16-27 and pg. 24, l.1-17 [Appendix F, Responding Brief of the OPGT, filed October 25, 2019]

<sup>&</sup>lt;sup>20</sup> Questioning of Paul Bujold held July 27, 2016, p. 27, 1.23-24 [Appendix F, Responding Brief of the OPGT, filed October 25, 2019]

<sup>&</sup>lt;sup>21</sup> Questioning of Paul Bujold held July 27, 2016, p.18, l.24-27, p.19, l. 1-5, p.24, l.24-27, p. 27, l.1-14, p.31, l. 26-27, and p.32, l. 1-27 [Appendix F, Responding Brief of the OPGT, filed October 25, 2019]

- e. Following the granting of the ATO, the SFN spoke to the related motion and endorsed the ATO to the Court. Counsel for the SFN stated that the SFN was "highly motivated" to ensure the asset transfer was effective, and that "it was in everyone's best interest to make sure the transfer took place."23
- 13. The related motion referred to above was an application by the OPGT pursuant to Rule 5.13 seeking production by the SFN of records relating to the asset transfer, including records relating to the assets themselves. The OPGT withdrew this application following agreement with the parties and the SFN that the final terms of the ATO were acceptable.24
- 14. In January 2019, the Court approved a litigation plan for the steps required to hear the 1985 Trustees' Jurisdiction Application. That plan required anyone seeking participatory rights in the Jurisdiction Application file an application for that purpose by January 31, 2019. The SFN chose not to file any application.<sup>25</sup>
- 15. In its motion filed September 26, 2019, the SFN now seeks to intervene not only with respect to the asset transfer issue, but in the jurisdiction application as well.
- 16. The Questioning of Darcy Twin on his Affidavit in support of the intervention application disclosed the following:
  - a. The SFN seeks to represent the perspective of Chief and Council of the SFN. The SFN takes the position that Chief and Council represents the Members of Sawridge First Nation but purports to speak only for Members currently on the

<sup>23</sup> Transcript of Case Management Hearing, held August 24, 2019, p.39, l.1-11 [Appendix I, Responding Brief of the OPGT, filed October 25, 20191

Questioning of Darcy Twin, held October 18, 2019, Exhibit "H" [Appendix P, Responding Brief of the OPGT, filed October 25, 2019]

<sup>&</sup>lt;sup>22</sup> Questioning of Paul Bujold held July 27, 2016, p. 28, 1.5-13 [Appendix F, Responding Brief of the OPGT, filed October 25, 20191

<sup>&</sup>lt;sup>24</sup> Application by the Office of the Public Trustee of Alberta, filed February 1, 2016 [Appendix E, Responding Brief of the OPGT, filed October 25, 2019]; Questioning of Paul Bujold held July 27, 2016, p.7, l. 7-17 and p.8 1.1-5 [Appendix F, Responding Brief of the OPGT, filed October 25, 2019]

SFN membership list, not for individuals who are currently entitled to membership.<sup>26</sup>

- b. Chief and Council of SFN did not pass a BCR to authorize this intervention application and refuses to produce the minutes of the meeting where that decision was purportedly made.<sup>27</sup>
- c. Chief and Council of SFN did not hold a meeting of SFN members to obtain their directions or discuss their perspectives on the proposed intervention. Darcy Twin was not aware SFN Members had previously ratified the asset transfer.<sup>28</sup>
- d. Chief and Council of the SFN only deal with First Nation business, not trust business. Chief and Council does not discuss anything about trusts.<sup>29</sup>
- e. Mr. Twin had no knowledge or information regarding how the concerns raised by Canada in the letter produced as his Exhibit "C" to were resolved, but was able to confirm INAC had never taken steps to try to stop the operation of the Sawridge Trusts.<sup>30</sup>
- f. Darcy Twin personally conducted no review of the SFN records in preparing his affidavit. He relied upon the information and the selection of documents provided to him by counsel for the SFN. He adopted counsel for the SFN's position that SFN will not cooperate to produce documents and that it has already produced all documents relevant to the asset transfer.<sup>31</sup>

<sup>26</sup> Questioning of Darcy Twin, held October 18, 2019, p. 6, 1.16-27, p.7, 1.1-15, p.49, 1.26-27 and p.50, 1.1-7 [Appendix O, Responding Brief of the OPGT, filed October 25, 2019]

<sup>30</sup> Questioning of Darcy Twin, held October 18, 2019, p.30, l.1-14 [Appendix O, Responding Brief of the OPGT, filed October 25, 2019]

<sup>&</sup>lt;sup>27</sup> Questioning of Darcy Twin, held October 18, 2019, p. 7, 1.24-27, pg. 8, 1.1-7, pg. 25, 1.1-27 and pg. 26, 1.1-23 [Appendix O, Responding Brief of the OPGT, filed October 25, 2019] Chief and Council must exercise its by BCR, passed by a majority of Councillors present at a duly convened meeting. Informal discussions between Council members do not bind a First Nation. *Indian Act*, R.S.C. 1985, c. I-5, s. 2 [Authorities Tab 4, Responding Brief of the OPGT, filed October 25, 2019]; *Rough v. Cold Lake First Nations*, [2016] A.J. No. 258 (Q.B.), para 44-45 [Authorities Tab 5, Responding Brief of the OPGT, filed October 25, 2019]

<sup>&</sup>lt;sup>28</sup> Questioning of Darcy Twin, held October 18, 2019, p. 9, 1.8-11 [Appendix O, Responding Brief of the OPGT, filed October 25, 2019]

<sup>&</sup>lt;sup>29</sup> Questioning of Darcy Twin, held October 18, 2019, p.25, l.1-4 and p.41, l.6-10 [Appendix O, Responding Brief of the OPGT, filed October 25, 2019]

<sup>&</sup>lt;sup>31</sup> Questioning of Darcy Twin, held October 18, 2019, p. 16, 1.3-26 [Appendix O, Responding Brief of the OPGT, filed October 25, 2019]

#### **SUBMISSIONS**

The test for interventions provides that intervenor status should be granted sparingly. Where allowed terms and conditions may be imposed.

- 17. Rule 2.10 of the *Alberta Rules of Court*<sup>32</sup> authorizes interventions at the discretion of the Court, but provides no criteria or test for assessing intervention applications. As a result the granting of intervenor status is governed by common-law principles.<sup>33</sup> Those principles are outlined below.
- 18. The discretion to grant intervenor status is to be used "sparingly". Generally speaking an applicant for intervenor status must establish that:
  - a. They will be directly and "specially" affected by the outcome of application; or
  - b. They have special expertise or a unique perspective on the subject matter of the application that will assist the Court in its deliberations.<sup>34</sup>
- 19. Other questions to be considered in assessing proposed interventions include:
  - a. Is the presence of the intervenor necessary for the Court to properly decide the matter?
  - b. Can the intervenor's interest be protected by the parties?
  - c. Will the intervention unduly delay the proceedings?
  - d. Will there possibly be prejudice to the parties if the intervention is granted?
  - e. Will the intervention widen the dispute between the parties?
  - f. Will the intervention transform the court into a political arena?<sup>35</sup>

<sup>&</sup>lt;sup>32</sup> Alberta Rules of Court, Alta. Reg. 124/2010, Rule 2.10 [Authorities Tab 2, Responding Brief of the OPGT, filed October 25, 2019]

<sup>&</sup>lt;sup>33</sup> Stevenson and Cote, *Alberta Civil Procedure Handbook 2020*, page 2-17 [Authorities Tab 1, Responding Brief of the OPGT, filed October 25, 2019]

<sup>&</sup>lt;sup>34</sup> Canadian Centre for Bio-Ethical Reform v. Grande Prairie (City) [2017] A.J. No. 905 (C.A.) paras 9 and. 11 [Authorities Tab 3, Responding Brief of the OPGT, filed October 25, 2019]

<sup>&</sup>lt;sup>35</sup> Ibid at para. 10; UAlberta Pro-Life v. Governors of the University of Alberta, 2018 ABCA 350 at para. 10 [Authorities Tab 7, Responding Brief of the OPGT, filed October 25, 2019]

- 20. While Rule 2.10 does not articulate a test for intervention it does empower the Court to specify the rights and privileges of an intervenor as well as to impose terms and conditions.<sup>36</sup>
- 21. The SFN application concerns two discrete matters the asset transfer issue and the jurisdiction issue. The OPGT will first address the intervention considerations relevant to both issues, followed by the considerations specific to each issue.

The SFN has no direct interest in the outcome of the jurisdiction and asset transfer issues. It has also demonstrated an unco-operative attitude inconsistent with the role of an intervenor.

- 22. The OPGT respectfully submits both the asset transfer and the jurisdiction issue concern the affairs of a trust. While the SFN originally played a key role in the decisions leading to the creation of the 1982 and 1985 Trusts and the transfer of assets to the 1985 Trust, that role is now spent. The SFN now lacks any direct interest in the determination of such issues sufficient to warrant intervention. This fact was acknowledged by the SFN deponent, Darcy Twin, who confirmed that matters relating to the Trust are not "First Nation business" and are not discussed by the SFN Chief and Council.
- 23. The SFN may suggest it represents the interests of the members of the SFN. However, that representation is at best political rather than legal, and does not give rise to the kind of direct interest necessary to support intervention. Moreover, as acknowledged by the SFN deponent, Darcy Twin, no steps were taken by the SFN to in fact determine the views of SFN members. The OPGT notes the last consultation with SFN members with respect to the asset transfer issue occurred at the Band Member's meeting of April 15, 1985. At that time Band Members ratified and approved the transfer of assets to the 1985 Trust.

<sup>&</sup>lt;sup>36</sup> Alberta Rules of Court, Alta. Reg. 124/2010, Rule 2.10 [Authorities Tab 2, Responding Brief of the OPGT, filed October 25, 2019]

- 24. Moreover, the SFN is unwilling to agree to document production as part of any intervention.<sup>37</sup> While the SFN maintains it has produced all relevant records to the 1985 Trustees pertaining to the asset transfer, this has never been tested.<sup>38</sup> The SFN has been careful to remain a non-party and therefore not subject to production obligations or the swearing of an Affidavit of Records.<sup>39</sup>
- 25. The OPGT notes that it sought access to SFN records in 2016, as directed by *Sawridge* #3. This application would have provided an opportunity to explore what relevant records were in SFN's possession. The OPGT withdrew that application, as being unnecessary, following agreement on the terms of the ATO, which the SFN urged upon the OPGT. If the SFN were to be granted standing to reopen issues which the ATO was intended to resolve, it must be done on terms addressing the need for production of documents.
- 26. The OPGT notes, for example, the complete records of the SFN pertaining to its consultations with, and advice received from, its expert legal advisers such as Mr. Cullity and Dave Fennell, and its accountant, Mr. Ewoniak have not been produced. Such records would clearly be relevant to the issues of the 1985 beneficiary definition and the asset transfer.<sup>40</sup>
- 27. Similarly in this application, the SFN relies upon a letter from Indian Affairs inquiring about the Trusts but did not provide follow-up correspondence or records disclosing how the inquiry in fact resolved.<sup>41</sup> Some fragmentary follow-up correspondence has been

<sup>&</sup>lt;sup>37</sup> Questioning of Darcy Twin, held October 18, 2019, p. 43, 1.1-27, p.44, 1.1-10 and p.55-56 [Appendix O, Responding Brief of the OPGT, filed October 25, 2019]

<sup>&</sup>lt;sup>38</sup> Questioning of Darcy Twin, held October 18, 2019, p.43, 1.25-27 and p.44, 1.1-3 [Appendix O, Responding Brief of the OPGT, filed October 25, 2019]

<sup>&</sup>lt;sup>39</sup> Transcript of Case Management Hearing, held September 2 and 3, 2015, p.46, l.18-30 [Appendix D, Responding Brief of the OPGT, filed October 25, 2019]

<sup>&</sup>lt;sup>40</sup> Questioning of Paul Bujold, held May 27, 2014, p.33-38 [Appendix B, Responding Brief of the OPGT, filed October 25, 2019]; Answers to Undertakings of Paul Bujold, from May 27, 2014 Questioning, Undertaking #13 [Appendix C, Responding Brief of the OPGT, filed October 25, 2019]; Letter from Dentons, dated October 15, 2019 [Appendix N, Responding Brief of the OPGT, filed October 25, 2019]

Affidavit of Darcy Twin, filed September 26, 2019, Exhibit "C"

provided by the 1985 Trustees.<sup>42</sup> However, given the SFN refusal to agree to production of records there is no way of knowing if this is complete.<sup>43</sup>

28. While it might be argued such records enjoy privilege, that privilege is the SFN's to waive, and such a waiver may reasonably be considered a necessary precondition to intervention. At a minimum, if the Court were to entertain the possibility of an SFN intervention it might make the production of an Affidavit, including a detailed list of relevant and material documents, including those over which privilege is claimed, as a condition. Given the contradictions between SFN's positions in 1985 and 2016 and its current proposed position, any intervention must be premised on full production of records that will assist the Court.

The SFN it previously chose not to participate in the jurisdiction application and should not be allowed to do so now. Moreover, it brings no unique perspective to the jurisdiction issue.

- 29. When the jurisdiction application was initially scheduled, a litigation plan was approved including a date for applications by non-parties to intervene or participate.<sup>44</sup> The SFN was well aware of this deadline January 31, 2019 and elected not to apply. The OPGT submits in so doing the SFN acknowledged its participation in that application was not necessary.
- 30. The SFN has provided no explanation or rationale why, having found it unnecessary to apply to participate previously, it does so now. Insofar as the jurisdiction application is concerned, the issue to be determined and the positions of the parties as set forth in their respective briefs have not changed and SFN has no special expertise or perspective to contribute.

<sup>43</sup> Questioning of Darcy Twin, held October 18, 2019, p.55-56 [Appendix O, Responding Brief of the OPGT, filed October 25, 2019]

<sup>&</sup>lt;sup>42</sup> Supplemental Affidavit of Records of Sawridge Trustees, filed April 30, 2018, Documents #SAW001879, #SAW001881, #SAW001885, #SAW001886, #SAW001892 and #SAW001893 [Appendix K, Responding Brief of the OPGT, filed October 25, 2019]

<sup>&</sup>lt;sup>44</sup> Litigation Plan, filed January 16, 2019 [Appendix H, Responding Brief of the OPGT, filed October 25, 2019]; Questioning of Darcy Twin, held October 18, 2019, Exhibit "H" [Appendix P, Responding Brief of the OPGT, filed October 25, 2019]

- 31. The SFN relies on a 25-year-old letter from the Department of Indian Affairs to support its proposed position on the beneficiary definition. The point which the SFN seeks to draw from this letter is too flawed to be of assistance to the Court. In that letter the Department made inquiries about the Sawridge Trusts and suggested monies released to the SFN remained subject to the oversight of the Department to ensure they were used for the benefit of band members. However, the SFN makes no mention of the fact its then legal counsel, Mr. Cullity, explicitly and repeatedly rejected that suggestion, that ultimately the Department never interfered in the operation of the 1985 Trust, or that Mr. Cullity's position was subsequently confirmed by the Supreme Court of Canada in *Ermineskin*. The SFN does not explain this contradiction, or why it now relies on this discredited suggestion.
- 32. If allowed to intervene, the SFN would argue that the Court's jurisdiction to amend the beneficiary definition in the 1985 Trust is limited to defining beneficiaries as members of the SFN. The OPGT notes that this is the preferred remedy already sought by the 1985 Trustees in their application filed January 9, 2018.<sup>47</sup> The brief filed on behalf of the 1985 Trustees on March 29, 2019 argued in favour of this outcome.<sup>48</sup> The OPGT argued against this in its responding brief filed April 12, 2019.<sup>49</sup> An intervention by the SFN is not required to advance this position. The OPGT respectfully submits the SFN acknowledged as much when it originally chose not to apply to intervene.

<sup>45</sup> Affidavit of Darcy Twin, filed September 26, 2019, Exhibit "C"

<sup>47</sup> See paragraph 9(a)

<sup>&</sup>lt;sup>46</sup> Ermineskin Indian Band and Nation v. Canada, 2009 SCC 9 [Tab 4, Brief of Sawridge First Nation, filed September 26, 2019]; Questioning of Darcy Twin, held October 18, 2019, p. 30, l.1-14 [Appendix O, Responding Brief of the OPGT, filed October 25, 2019]; Supplemental Affidavit of Records of Sawridge Trustees, filed April 30, 2018, Documents #SAW001879, #SAW001881, #SAW001885, #SAW001886, #SAW001892 and #SAW001893 [Appendix K, Responding Brief of the OPGT, filed October 25, 2019]

<sup>&</sup>lt;sup>48</sup> Excerpt from the Sawridge Trustees Brief, filed March 29, 2019 at paras. 48 to 53 [Appendix L, Responding Brief of the OPGT, filed October 25, 2019]

<sup>&</sup>lt;sup>49</sup> Excerpts from the OPGT's Reply Brief, filed April 12, 2019 brief at paras. 82-87 [Appendix M, Responding Brief of the OPGT, filed October 25, 2019]

The SFN's proposed position respecting the asset transfer issue contradicts the position it has previously taken with the parties and the court in this proceeding and should not be allowed.

- 33. The SFN seeks to intervene on the asset transfer issue to argue that the assets transferred from the 1982 to the 1985 Trust remain subject to the terms of the 1982 Trust, including its beneficiary definition.
- 34. The OPGT respectfully submits such an argument does not lie in the mouth of the SFN given the history of the 1985 Trust and the positions, previously taken by the SFN, including the following:
  - a. The SFN was the architect of 1985 Trust and the asset transfer. Its clear purpose was to avoid assets being subject to the 1982 Trust.<sup>50</sup>
  - b. The SFN explicitly supported the August 24, 2016 Asset Transfer Order (ATO) and the 1985 Trustees' position that the purpose of the ATO was to confirm "the 1985 Trust was the entity with which to deal." in a letter to the OPGT urging it to consent to the Order;<sup>51</sup>
  - c. The SFN went so far as to threaten one of the parties the OPGT with costs if it did not consent to the ATO. 52
  - d. The SFN conducted a lengthy questioning of Mr. Bujold to elicit evidence supporting the ATO. That evidence established beyond doubt that the purpose of the asset transfer was to get the assets out of the 1982 Trust because the beneficiary definition in the 1982 Trust would have included the new members imposed on the SFN by Canada's legislative amendments to the Indian Act.<sup>53</sup>

<sup>&</sup>lt;sup>50</sup> Questioning of Darcy Twin, held October 18, 2019, Exhibit "B", "C" and "D" [Appendix P, Responding Brief of the OPGT, filed October 25, 2019]

<sup>&</sup>lt;sup>51</sup> Questioning of Darcy Twin, held October 18, 2019, Exhibit "F" and "G" [Appendix P, Responding Brief of the OPGT, filed October 25, 2019]

<sup>&</sup>lt;sup>52</sup> Questioning of Darcy Twin, held October 18, 2019, Exhibit "G" [Appendix P, Responding Brief of the OPGT, filed October 25, 2019] Ironically, the SFN now threatens costs against any party who opposes its standing to argue against the ATO. See: Application by the Sawridge First Nation for Intervenor Status in the Jurisdiction Applications, para. 2

<sup>&</sup>lt;sup>53</sup> Questioning of Paul Bujold held July 27, 2016 [Appendix F, Responding Brief of the OPGT, filed October 25, 2019]

- e. The evidence elicited from Mr. Bujold by the SFN was extensively relied upon by the 1985 Trustees in their brief in support of the ATO.<sup>54</sup>
- f. The SFN endorsed the ATO to the Court on August 24, 2016. Its counsel stated the SFN was "highly motivated" to ensure the asset transfer was effective because the purpose of the transfer was to avoid any claim to beneficiary status by persons who would have become members after Bill C-31 took effect on April 17, 1985. 55
- 35. The SFN now seeks standing to make submissions which contradict all of the foregoing. The SFN has provided no explanation or rationale for this, or why it seeks to advance such a position for the first time at the 11<sup>th</sup> hour. The time for any submission to this effect would have been in August 2016 when the asset transfer was spoken to.
- 36. The OPGT respectfully submits the SFN should not be given formal status as an intervener at this late date to make submissions which are the opposite of the position it has advocated to the parties and the Court, and on which they have relied, throughout these proceedings. The OPGT notes it relied upon the SFN's original position supporting the asset transfer when it withdrew its Rule 5.13 application against the SFN. It would suffer prejudice if the SFN were now allowed to resile from its original position by way of intervention.
- 37. The effect of the SFN's new position would also be to widen the issues and seek relief not sought by any party. This is not the proper role of an intervenor.

### **RELIEF SOUGHT**

- 38. The SFN application to intervene be denied.
- 39. Alternatively, if any intervention is allowed it should be narrow in scope and subject to the following conditions:

<sup>&</sup>lt;sup>54</sup> Brief of the 1985 Trustees on the asset transfer, filed August 17, 2016, paras. 6.7,8, 10, 11, 12, 13 and 17 [Appendix G, Responding Brief of the OPGT, filed October 25, 2019]

Transcript of Case Management Hearing, held August 24, 2019, p.38 [Appendix I, Responding Brief of the OPGT, filed October 25, 2019]

- a. Intervention shall be limited to the asset transfer issue;
- b. SFN shall file an Affidavit identifying any evidence or records in its power / possession that are relevant and material to the asset transfer or the positions Sawridge seeks to take on the Jurisdiction Application. With respect to the records, the Affidavit shall provide the same information as an Affidavit of Records.
- c. The affiant of the Affidavit will be made available for questioning by all parties;
- d. SFN written and oral submissions shall be limited in length consistent with its role as an intervenor.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of October, 2019.

**HUTCHISON LAW** 

Per:

JANET L. HUTCHISON

Solicitors for the Office of the Public Guardian and Trustee of Alberta

FIELD LAW

Per:

P. JONATHAŃ FĄULDS, Q.C.

Solicitors for the Office of the Public Guardian and Trustee of Alberta

## LIST OF APPENDICIES

Tab	<u>Appendices</u>
A.	Written Submissions of Sawridge First Nation, filed March 8, 2012
В.	Transcript from Questioning of Paul Bujold, held May 27, 2014
C.	Answers to Undertakings of Paul Bujold, from May 27, 2014 Questioning, Undertaking #13
D.	Transcript of Case Management Hearing, held September 2 and 3, 2015
E.	Application by the Office of the Public Trustee of Alberta for Production under Rule 5.13, filed February 1, 2016
F.	Transcript from Questioning of Paul Bujold, held July 27, 2016
G.	Written Submissions of Trustees, filed August 17, 2016
Н.	Litigation Plan, filed January 16, 2019
I.	Transcript of Case Management Hearing, held August 24, 2016
J.	Affidavit of Records of Sawridge Trustees, filed April 30, 2018, Document #SAW000039
K.	Supplemental Affidavit of Records of Sawridge Trustees, filed April 30, 2018, Documents #SAW001879, #SAW001881, #SAW001885, #SAW001886, #SAW001892, #SAW001893
L.	Sawridge Trustees Brief, filed March 29, 2019
M.	OPGT's Reply Brief, filed April 12, 2019
N.	Letter from Dentons, dated October 15, 2019
О.	Transcript from Questioning of Darcy Twin, held October 18, 2019
P.	Questioning of Darcy Twin, held October 18, 2019, Exhibits for Identification

## LIST OF AUTHORITIES

<u>Tab</u>	<u>Authorities</u>
1.	Alberta Civil Procedure Handbook 2020, Stevenson and Cote
2.	Alberta Rules of Court, Alta. Reg. 124/2010
3.	Canadian Centre for Bio-Ethical Reform v. Grande Prairie (City) [2017] A.J. No. 905 (C.A.)
4.	Indian Act, R.S.C. 1985, c. I-5, s. 2
5.	Rough v. Cold Lake First Nations, [2016] A.J. No. 258 (Q.B.)
6.	Sawridge Band v. Her Majesty the Queen, Congress of Aboriginal Peoples, Native Council of Canada (Alberta), Non-Status Indian Association of Alberta and Native Women's Association of Canada AND BETWEEN Tsuu T'ina First Nation (formerly the Sarcee Indian Band) v. Her Majesty the Queen, Congress of Aboriginal Peoples, Native Council of Canada (Alberta), Non Status Indian Association of Alberta and Native Women's Association of Canada, 2009 CanLII 69744 (SCC)
7.	UAlberta Pro-Life v. Governors of the University of Alberta, 2018 ABCA 350 (C.A)

## TAB A

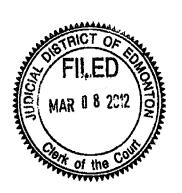
Clerk's stamp:

COURT FILE NUMBER

1103 14112

COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE

**EDMONTON** 



IN THE MATTER OF THE TRUSTEE ACT, R.S.A. 2000, c. T-8, AS AMENDED

IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN, OF THE SAWRIDGE INDIAN BAND, NO. 19, now known as SAWRIDGE FIRST NATION, ON APRIL 15, 1985 (the "1985 Sawridge Trust")

**APPLICANTS** 

ROLAND TWINN,
CATHERINE TWINN,
WALTER FELIX TWIN,
BERTHA L'HIRONDELLE, and
CLARA MIDBO, as Trustees for the 1985
Sawridge Trust

DOCUMENT

WRITTEN BRIEF OF THE SAWRIDGE FIRST NATION

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Parlee McLaws LLP #1500, 10180-101 Street Edmonton, Alberta T5J 4K1

Attention:

Edward H. Molstad (780) 423-8506

Telephone: Fax:

(780) 423-2870

File No:

64203-7/EHM

Chamberlain Hutchison #155, 10403 – 122 Street Edmonton, AB T5N 4C1

Attention: Janet L. Hutchison Solicitors for the Public Trustee of Alberta

Department of Justice 300, 10423 – 101 Street Edmonton, AB T5H 0E7

Attention: Jim Kindrake
Solicitors for the Minister of Aboriginal
Affairs and Northern Development (Canada)

Davis LLP #1201, 10060 Jasper Avenue Edmonton, AB T5J 4E5

Attention: Priscilla Kennedy Solicitors for June Kolosky and Aline Huzar

Reynolds, Mirth, Richards & Farmer LLP 3200 Manulife Place 10180 - 101 Street Edmonton, AB T5J 3W8

Attention: Marco Poretti Solicitors for the Trustees for the 1985 Sawridge Trust

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PART II – ISSUES	6
PART III – SUBMISSIONS OF LAW	7
PART IV - REMEDY SOUGHT	13
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#### INTRODUCTION

- 1. This application originates from proceedings seeking advice and direction of the court in respect to certain trust matters.
- 2. The Sawridge Indian Band, No. 19, now known as the Sawridge First Nation is a First Nation located in northern Alberta (the "Sawridge First Nation"). In the 1980's, three trusts were created for the benefit of the members of the Sawridge First Nation that are relevant in this matter (the "1982 Trust" the "1985 Trust" and the "1986 Trust").
- 3. By Order of Justice Thomas dated August 31, 2011, (the "Procedural Order") the trustees of the 1985 Trust (the "Sawridge Trustees") were directed to bring an application (the "Advice and Direction Application") to determine the following issues:
  - a. To seek direction with respect to the definition of "Beneficiaries" contained in the 1985 Sawridge Trust, and if necessary to vary the 1985 Sawridge Trust to clarify the definition of "Beneficiaries".
  - To seek direction with respect to the transfer of assets to the 1985 Sawridge Trust.
     Order of Justice D.R.G. Thomas, dated August 31, 2011, paragraph 1.
- 4. This application is brought by the Office of the Public Trustee ("Public Trustee") and is in respect to three issues:
  - a. The appointment of the Public Trustee as litigation representative of minors who may be interested in the within proceedings;
  - b. The payment of advance costs on a solicitor and his own client basis with exemption from liability for costs as conditions of any such appointment; and
  - c. The relevance of intervening in the membership application process of the Sawridge First Nation and questioning on "membership" issues in these proceedings.
- 5. The Sawridge First Nation's submissions are in response to the Public Trustee's submissions on the relevance of the Sawridge First Nation's membership application process and criteria to the Advice and Direction Application. In particular, the Sawridge

First Nation makes submissions in response to the Public Trustee seeking direction that it may question witnesses on: i) the number of pending membership applications; ii) the details of membership criteria and who makes membership decisions; and iii) the steps taken to identify and fully ascertain the members of the class of beneficiaries.

### PART I - STATEMENT OF FACTS

6. On April 15, 1982, Walter Patrick Twinn, former Chief of Sawridge First Nation, executed a Deed of Settlement establishing the 1982 Trust. The purpose of the 1982 Trust was to provide long-term benefits to members of the Sawridge First Nation and their descendants.

Affidavit of Paul Bujold, dated August 30, 2011, paragraph 3.

Affidavit of Paul Bujold, dated September 12, 2011, paragraph 9.

7. On April 17, 1982, the Constitution Act, 1982, along with the Canadian Charter of Rights and Freedoms (the "Charter") came into force. Section 15 of the Charter, the provisions dealing with equality, did not come into force until April 17, 1985 so that legislation could be adapted to comply with the new equality requirements.

Affidavit of Paul Bujold, dated September 12, 2011, paragraph 13.

8. Following the passage of the Charter, the Indian Act, R.S.C. 1970, c. 1-6 (the "Pre-Charter Indian Act") was amended by Bill C-31. The amendments in Bill C-31 allowed for persons who had lost their Indian status to regain that status. With the passage of Bill C-31, the Sawridge First Nation believed there would be a substantial influx of new members into the Sawridge First Nation. Accordingly, the 1985 Trust was settled on April 15, 1985 for the purpose of preserving the assets of the Sawridge First Nation for the benefit of members as defined under the Pre-Charter Indian Act.

Affidavit of Paul Bujold, dated September 12, 2011, paragraphs 14-15. Affidavit of Paul Bujold, dated August 30, 2011, paragraph 4.

 The Sawridge Trustees are considering making distributions from the 1985 Trust at some date in the future. The Sawridge Trustees are concerned that the definition of "Beneficiary" under the 1985 Trust could be discriminatory since the definition refers to provisions in the *Pre-Charter Indian Act*. Accordingly, the Sawridge Trustees are seeking an order under the Advice and Direction Application to resolve the issue of potential discrimination in the definition of "Beneficiary" of the 1985 Trust.

Affidavit of Paul Bujold, dated September 12, 2011, paragraphs 32-33. Affidavit of Paul Bujold, dated August 30, 2011, paragraph 6.

- 10. The Sawridge Trustees have taken steps to notify potential beneficiaries of the 1985 Trust. These steps are detailed in the Affidavit of Paul Bujold, dated August 30, 2011, and include:
  - a. A series of newspaper advertisements in Alberta, Saskatchewan, Manitoba and British Columbia for the purpose of collecting names of potential beneficiaries;
  - b. Correspondence with a number of potential beneficiaries; and
  - c. Creating a website to provide notice to beneficiaries and potential beneficiaries.

Affidavit of Paul Bujold, dated August 30, 2011, paragraphs 7-9, 11, 13.

11. Due to the steps outlined above, the Sawridge Trustees have made a list of 194 beneficiaries and potential beneficiaries, with contact information of 190 of those persons.

Affidavit of Paul Bujold, dated August 30, 2011, paragraph 11.

#### PART II - ISSUES

- 12. The Sawridge First Nation submissions relate to the following issues:
  - a. Is the Sawridge First Nation membership processing and criteria relevant to the Advice and Direction Application?
  - b. Is the Advice and Direction Application the proper forum for the membership issues raised by the Public Trustee to be addressed?
  - c. Is there a conflict of interest in the dual roles of acting as a trustee of the 1985 Trust and determining membership applications of the Sawridge First Nation?

## TAB B

1

1	COURT FILE NO: 1103 14112
2	COURT: QUEEN'S BENCH OF ALBERTA
3	JUDICIAL CENTRE: EDMONTON
4	
5	IN THE MATTER OF THE TRUSTEE ACT, R.S.A. 2000,
6	c.T-8 as amended
7	IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS
8	SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN, OF THE SAWRIDGE INDIAN BAND, NO. 19, now known as
9	SAWRIDGE FIRST NATION, ON APRIL 15, 1985 (The "1985 SAWRIDGE TRUST")
10	
11	APPLICANTS: ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE and
12	CLARA MIDBO, as TRUSTEES FOR THE 1985 SAWRIDGE TRUST
13	SAWRIDGE IRUSI
14	
15	
16	QUESTIONING ON AFFIDAVIT
17	OF
18	PAUL BUJOLD
19	
20	Ms. D.C.E. Bonora For the Applicants
21	Ms. J.L. Hutchison For the Public Trustee
22	
23	Susan Stelter Court Reporter
24	
25	Edmonton, Alberta
26	27 & 28 May, 2014
27	
	AccuScript Reporting Services ————————————————————————————————————

- 1 constitution, referring you to Section 17.7 and the
- Governance Act referring to part 2. There would be no
- 3 other answer that we could provide you.
- 4 MS. HUTCHISON: Thank you for that clarification.
- 5 Q MS. HUTCHISON: Do you accept the answer of your
- 6 counsel on that, Mr. Bujold?
- 7 A Yes, I do.
- 8 Q Thank you. Mr. Bujold, if you have got your September
- 9 12th, 2011 Affidavit handy. And I am looking at
- paragraph 7, 8, and 9. I'll just give you a second to
- 11 take a quick look at those paragraphs.
- 12 A M-hm.
- 13 Q I take it from those paragraphs, Mr. Bujold, that you
- 14 actually spoke to Ron Ewoniak before you swore this
- 15 Affidavit?
- 16 A Yes, I did.
- 17 Q Just help me understand. Mr. Ewoniak, is he completely
- 18 retired or sort of does an engagement partner at
- Deloitte mean he is still available to respond to
- 20 inquiries and do some work?
- 21 A As far as I understand he is completely retired.
- 22 Q Okay. So he was speaking to you really on a personal
- 23 basis, I guess?
- 24 A Yes.
- 25 Q He is not with Deloitte anymore?
- 26 A No.
- 27 Q But I take it that he had a recollection of

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- 1 establishing the Trust or being involved in
- 2 establishing the Trust?
- 3 A Yes.
- 4 Q And what is your understanding of what role Mr. Ewoniak
- 5 played in creation of the 1982 and 1985 and '86 Trust?
- 6 A I am not sure about the '82 Trust. My understanding is
- 7 that for the '85 and '86 Trust he was the Deloitte
- 8 partner who was providing accounting advice to the
- 9 trustees.
- 10 Q Okay. And did you inquire with Mr. Ewoniak as to
- 11 whether or not his files from that time period were
- 12 still in existence?
- 13 A Yes, I did. And he did provide some documentation, but
- 14 most of it he referred us to Deloitte.
- 15 Q Okay. And were you able to find out from Deloitte
- whether or not those files still exist?
- 17 A What we found out was --
- 18 MS. BONORA: Sorry, so which files are you
- 19 particularly talking about? The files in relation to
- 20 the creation of the Trust? Is that what you are asking
- 21 about?
- 22 MS. HUTCHISON: That is what we are talking about
- 23 at the moment, yes.
- 24 MS. BONORA: Okay.
- 25 A The files that Deloitte held had been -- weren't the
- 26 complete accounting files. So they were sort of the
- 27 remnant of the basic information.

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- 1 Q MS. HUTCHISON: Okay.
- 2 A And so we were able to get copies for our files, some
- 3 of which has been provided here.
- 4 Q Okay.
- 5 A Of the information that we have. And that was the only
- 6 information they had available.
- 7 Q So I will just go a bit broader. Now you spoke to
- 8 Mr. Ewoniak about the creation of the '85 and '86
- 9 Trust?
- 10 A Yes.
- 11 Q It appears from paragraph 7, 8, and 9 that he had some
- 12 knowledge of the individuals that had held property in
- 13 trust before it was transferred?
- 14 A Yes.
- 15 Q To the '82 Trust?
- 16 A That is correct.
- 17 Q Was he involved in setting that up as well, or?
- 18 A My understanding was that he was involved as the
- 19 Deloitte partner assigned to this client. So he did
- 20 have some knowledge of the entire financial process of
- 21 the Trusts.
- 22 Q Okay.
- 23 A And the holding companies related to them.
- 24 Q Okay. So I understand your counsel has provided some
- 25 documentation around or relating to the transfer of
- assets from the '82 Trust to the '85 Trust. It is not
- clear to me at this point, though, that we have gotten

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I'm going to put a few undertakings on the 1 everything. record. Maybe just go off the record for MS. BONORA: 4 now. Sure. 5 MS. HUTCHISON: (Discussion off the Record.) 6 So, Mr. Bujold, we have had a chat 7 MS. HUTCHISON: off the record, counsel has had a chat off the record about some of the efforts that have been made to locate 9 documentation around the assets that were transferred 10 from individuals to the 1982 Trust and then ultimately 11 transferred from the 1982 Trust to the 1985 Trust. 12 I am just going to go through a little bit of that with 13 you. Your counsel may want to assist, and I have no 14 objection to her doing that, by explaining some of the 15 efforts that have been made, and then we will deal with 16 a few undertakings. 17 In general, what efforts have you made to try and 18 locate documentation to demonstrate what assets were 19 held by individuals prior to the creation of the 1982 20 Trust, and that were then transferred into the 1982 21 Trust? What have you done to locate that 22 documentation? 23 We tried to contact everyone who was still alive who 24 had knowledge of the financial dealings of the Trusts 25 at the time. 26

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And who would that include?

27

- 1 A Well, Ron turned out to be the -- Ron Ewoniak turned
- 2 out to be the main person.
- 3 Q Okay.
- 4 A So we contacted him. We also contacted the company --
- 5 the companies of the Sawridge Trusts for any records
- 6 that they may be holding, and through the company and
- 7 Ron Ewoniak we inquired with Deloitte who had been the
- 8 accounting firm holding the records.
- 9 Q Okay.
- 10 A We also inquired with various legal firms who had
- 11 provided counsel to the Trusts.
- 12 O And so David Jones?
- 13 A David Jones we couldn't find. We spoke to -- we
- 14 couldn't find David Fennell either.
- 15 Q Sorry, you couldn't find David Fennell?
- 16 A David Fennell.
- 17 Q Are you aware that he is actively involved in the gold
- 18 mining corporation?
- 19 A Yes, we heard that but we were never able to sort of
- 20 track him down to see if he still held any records.
- 21 Q So nobody has actually spoken to Mr. Fennell?
- 22 A Not that I am aware of.
- 23 Q Let's just go off the record for a second.
- 24 (Discussion off the record.)
- 25 Q MS. HUTCHISON: So Mr. Bujold, my understanding is
- 26 that attempts were made to contact David Fennell but he
- 27 didn't respond to your inquiries?

```
No, and he didn't provide any documents.
    Α
 1
         Sorry, did he respond to your inquiries?
 2
 3
         No.
         So nobody has actually spoken to him?
         And the requests -- we did contact him, or tried to
         contact him, but the request that we sent was a request
 6
         for information that he may have, or records that he
 7
         may hold in his, or have in his possession of the
 8
         financial dealings of the Trusts in the earlier days.
 9
         And he never responded to that.
10
        Okay. So I am going to ask for a couple of things.
11
         First I will ask you to undertake to provide us with
12
         copies of any actual communications sent to Mr.
13
         Fennell, whether they were by letter, email, or
14
15
         otherwise, documenting the request that you were
16
        making. We would like a copy of those.
                             We will take that under advisement.
17
    MS. BONORA:
         I'm not sure that that is entirely relevant.
18
19
         anyway, we will take that under advisement.
                         UNDERTAKING NO. 12: (UNDER ADVISEMENT)
20
                         RE PROVIDE COPIES OF ANY COMMUNICATIONS
21
                         SENT TO MR. FENNELL, WHETHER THEY WERE
22
                        BY LETTER, EMAIL, OR OTHERWISE,
23
                         DOCUMENTING THE REQUEST THAT WAS BEING
24
                         MADE.
25
                             Secondly, I would ask you to
26
    MS. HUTCHISON:
```

undertake to renew your efforts to contact Mr. Fennell

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27

# TAB C

#### UNDERTAKINGS FROM

### COURT FILE NO.: 1103 14112 COURT: QUEEN'S BENCH OF ALBERTA JUDICIAL DISTRICT OF EDMONTON

IN THE MATTER OF THE TRUSTEE ACT, R.S.A. 2000, c.T-8 as amended

IN THE MATTER FO THE SAWRIDGE BAND INTER VIVOS
SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN,
OF THE SAWRIDGE INDIAN BAND, NO. 19 also known as
SAWRIDGE FIRST NATION, ON APRIL 15, 1985
(The "1985 SAWRIDGE TRUST")

APPLICANTS: ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE and CLARA MIDBO, as TRUSTEES FOR THE 1985 SAWRIDGE TRUST

QUESTIONING ON AFFIDAVIT OF PAUL BUJOLD

Ms. D.C.E. Bonora for the Applicants
Ms. J. L. Hutchison for the Public Trustee
Susan Stelter Court Reporter
Edmonton, Alberta
27 & 28 May, 2014

#### **UNDERTAKING NO. 1:**

RE: PROVIDE LIST OF WHO SAT ON SAWRIDGE FIRST NATION CHIEF AND COUNCIL FROM 1985 UNTIL PRESENT

FROM	ТО	СНІЕГ	COUNCILLOR	COUNCILLOR
Feb 85	Feb 87	Walter P. Twinn	Walter F. Twinn	George Twin
Feb 87	Feb 89	Walter P. Twinn	Walter F. Twinn	George Twin
Feb 89	Feb 91	Walter P. Twinn	Walter F. Twinn	George Twin
Feb 91	Feb 93	Walter P. Twinn	Walter F. Twinn	George Twin
Feb 93	Feb 95	Walter P. Twinn	Walter F. Twinn	George Twin
Feb 95	Feb 97	Walter P. Twinn	Walter F. Twinn	George Twin
Feb 97	8 Aug 97	Walter P. Twinn	Walter F. Twinn	George Twin
9 Aug 97	30 Oct 97	Walter P. Twinn	Walter F. Twinn	Roland Twinn
31 Oct 97	Feb 99	Bertha L'Hirondelle	Walter F. Twinn	Roland Twinn
Feb 99	Feb 01	Bertha L'Hirondelle	Walter F. Twinn	Roland Twinn
Feb 01	Feb 03	Bertha L'Hirondelle	Walter F. Twinn	Roland Twinn
Feb 03	Feb 05	Roland Twinn	Bertha L'Hirondelle	Ardell Twinn
Feb 05	Feb 07	Roland Twinn	Bertha L'Hirondelle	Justin Twin



#### **UNDERTAKING NO. 10:**

RE: PROVIDE A COPY OF ANY POLICIES OR CONTRACTS OR OTHER DOCUMENTATION RELATING TO A CODE OF CONDUCT OR MATTERS SUCH AS CONFLICT OF INTEREST FOR THE TRUSTEES THEMSELVES.

See Code of Conduct attached at tab 10.

#### **UNDERTAKING NO. 11:**

RE: ON A BEST EFFORTS BASIS DETERMINE WHETHER THERE ARE ANY GUIDELINES, POLICIES, CONTRACTS OR ANY DOCUMENTATION RELATING TO CODES OF CONDUCT OR CONFLICT OF INTEREST IN RELATION TO THE MEMBERSHIP REVIEW COMMITTEE, MEMBERSHIP APPEAL COMMITTEE, OR CHIEF AND COUNCIL SPECIFIC TO MEMBERSHIP.

Provided by Mike McKinney. There are no other guidelines, policies, procedures, rules or any document relating to the code of conduct or conflict of interest in relation to the Membership Committee, the Membership Appeal Committee, or Chief and Council with regard to membership other than the Constitution Act, the Governance Act or the Membership Rules of the Sawridge First Nation. Attached are the Constitution Act and Governance Act at tab 11; the Membership Rules were previously provided.

## **UNDERTAKING NO. 12: (UNDER ADVISEMENT)**



RE: PROVIDE COPIES OF ANY COMMUNICATIONS SENT TO MR. FENNELL, WHETHER THEY WERE BY LETTER, EMAIL, OR OTHERWISE, DOCUMENTING THE REQUEST THAT WAS BEING MADE.

Our letter to David Fennel is included at tab 12.

#### UNDERTAKING NO. 13:

RE: CONTACT MR. FENNELL AND ADVISE WHETHER OR NOT HE HAS ANY DOCUMENTATION OR ACCESS TO DOCUMENTATION OR IS AWARE OF ANOTHER RESOURCE OR SOURCE THAT MAY HAVE DOCUMENTS RELEVANT TO THE ASSETS THAT WERE HELD BY INDIVIDUALS AND THEN THE TRANSFER FROM THOSE INDIVIDUALS TO THE '82 TRUST, OR RELEVANT TO THE TRANSFER OF ASSETS FROM THE '82 TRUST TO THE '85 TRUST.

Our response from David Fennell is included at tab 13.

### **UNDERTAKING NO. 14: (REFUSED)**

RE: PROVIDE COPIES OF ANY DOCUMENTATION SENT ATTEMPTING TO SEEK INFORMATION FROM DAVID JONES.

We e-mailed David Jones and received the response provided at tab 15.



July 28th, 2014

File No.: 551860-1

#### **DELIVERED VIA MAIL**

Ashvin R Singh Student-at-Law Dentons Canada LLP 2900 Manulife Place 10180-101 Street Edmonton, AB Canada T5J 3V5

Dear Mr. Singh,

# RE: Sawridge Trust-Transfer of Assets from 1982 to 1985 Trust

In response to your letter dated July 21, 2014. I am not in possession of any of the files or documents relating to the Sawridge Trust or any of the other Sawridge entities. When I ceased to act for Sawridge all files were retained by Sawridge at their office in Edmonton. It has been more than 25 years and I have no idea what has happened to them in the interim. I regret that I could not be more helpful.

Yours Truly,

David Fennell

# TAB D

Action No.: 1103 14112 E-File No.: EVQ15SAWRIDGEBAND2 Appeal No.:

# IN THE COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL CENTRE OF EDMONTON

IN THE MATTER OF THE TRUSTEE ACT, R.S.A. 2000, c. T-8, AS AMENDED

IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN, OF THE SAWRIDGE INDIAN BAND, NO.19 now known as SAWRIDGE FIRST NATION ON APRIL 15, 1985 (the "1985 Sawridge Trust")

ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE, and CLARA MIDBO, as Trustees for the 1985 Sawridge Trust

		Applicants
A form you word and not written a money are with		
	PROCEEDINGS	
4.2000.000.000.000.000.000.000.000.000.0		

Edmonton, Alberta September 2, 2015 September 3, 2015

Transcript Management Services, Edmonton 1000, 10123 99th Street Edmonton, Alberta T5J-3H1 Phone: (780) 427-6181 Fax: (780) 422-2826 1 2

3

The purpose of these rules is to provide a means by which claims can be fairly and justly resolved in or by a court process in a timely and cost-effective way.

4 5 6

And we emphasize those last few words.

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In particular, these rules are intended to be used (a) to identify the real issues in dispute; (b) to facilitate the quickest means of resolving the claim at the least expense; (c) to encourage the parties to resolve the claim themselves, by agreement, with or without assistance, as early in the process as practicable; (d) to obtain the parties -- or to oblige the parties to communicate honestly, openly, and in a timely way; and (e) to provide an effective, efficient, and credible system of remedies and sanctions to enforce these rules and orders in judgments.

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With respect to the suggestion that the Sawridge First Nation is a party to these proceedings -- and we do have copies of these if you require them, but we refer you to our letter to the Court, dated June 17th, 2015, which attached the letter to the counsel for the Public Trustee, also dated that same day. These letters confirm, Sir, that on April 5th of 2012, you inquired as to whether the Sawridge First Nation wished to be added as a party to these proceedings, and on May 7th, 2012, we wrote to you, Sir, on behalf of the Sawridge First Nation, advising that full party status was not necessary. Again, Sir, on May 14th, 2012, you wrote to counsel for Sawridge First Nation and again invited Sawridge First Nation to consider its invitation to seek full party status, and on May 29th, 2012, we advised the Court, on behalf of Sawridge First Nation, that Sawridge First Nation continued to be of the view that full party status would not be necessary. In paragraph 1 of the Public Trustee's second reply, which was filed just a couple of days ago, I think it was intended to be a reply -- maybe that's one I didn't refer you to, Sir.

30 31

32 THE COURT:

That's the August 31.

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34 MR. MOLSTAD:

That's the August 31 reply. That was intended to be a reply, I believe, to the Sawridge Trustees' submissions; however, in paragraph 1 of this document, they state that the Public Trustee is simply asking the Sawridge First Nation to file an affidavit of records, what every other litigant does. Sawridge First Nation is neither a litigant or a party at this time to these proceedings.

38 39 40

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Sir, in addressing the issues before you, we submit that it's important that you not lose sight about what this matter is about. The Sawridge Trustees apply to you for advice and Sawridge Band membership definition, and into the status and number of Band membership applications that are not -- or sorry -- that are currently awaiting determination.

That is the order that you made, Sir, and we submit that regard should be had in relation to the terms of that order. I'll come back to that in my submissions, but at this time, we submit that there is no application before you to have Part 5 of the *Rules* apply to these proceedings. If there was and if you granted such an order, we submit that it would not help the Public Trustee as it is only parties to an action that are required to prepare and serve affidavit of records, and as we have stated earlier, Sawridge First Nation is not a party to these proceedings.

 If there were an application and an order made that all of Part 5 applied to these proceedings, then the Public Trustee could apply under rule 5.13 for the Sawridge First Nation to produce a record, and that is part of their application in the alternative, and I think it's important to look at 5.13 and to review the jurisprudence that's developed in relation to the application of that rule. If you turn to our brief, Sir, we -- at page 8 of our brief, we reprint a copy of the substance --

20 THE COURT:
21 brief.
22
23 MR. MOLSTAD:
24
25 THE COURT:

Sorry. Just -- sorry. I was just reaching for the Yeah.
Yeah.
Do you want to just repeat that?

26
27 MR. MOLSTAD: Page 8 of the brief, Sir, --

28
29 THE COURT: Yeah.

31 MR. MOLSTAD: -- we have reprinted rule 5.13.

33 THE COURT: Right.

35 MR. MOLSTAD: And what it says is:

On application, and after notice of the application is served on the person affected by it, the Court may order a person who is not a party to produce a record at a specified date, time and place if (a) the record is under the control of that person, (b) there is reason to believe that the record is relevant and material, and (c) and the

1 person who has control of the record might be required to produce 2 it at trial. 3 4 (2) The person requesting the record must pay the person 5 producing the record an amount determined by the Court. 6 7 Rule 209 of the previous Rules was this -- the predecessor to this rule, and it has been interpreted over a number of years. It was broader than the existing rule, but it's helpful 8 9 to look at the jurisprudence in relation to rule 209 and follow it through to the more 10 current version of the rule. Mr. Justice Wachowich, as he -- as he then was, in Ed Miller 11 Sales, which is found at tab B7 of our book of authorities, set some principles with 12 respect to the application of the previous rule, which, as I say, was broader than the 13 existing rule in terms of issue of relevance and materiality, and what he said was, at the 14 top of page 3 in paragraphs 13 to 17: 15 16 1. The rule should not be used as a fishing expedition to discover 17 whether or not a person is in possession of a document. 2. The 18 documents need not necessarily be admissible in evidence at trial. 19 20 21 And I'll come back to that because the existing rule deals with documents that are 22 relevant and material. 23 24 3. The documents of which production is sought must be 25 adequately described but not necessarily so specifically that they can be picked out from any number of other documents. 4. The 26 27 third party's objections to production must be considered but are 28 not determinative. 29 30 I accept this approach with the additional condition that the rule cannot be used as a 31 method of obtaining discovery of a person not a party to the action. As Mr. Justice 32 Thompson of the Ontario High Court said in Marcovitz v. Toronto Transit when 33 considering the Ontario equivalent of rule 209(1): 34 35 Rule 349 was never intended to be used merely as a means 36 of obtaining discovery from a stranger to the action nor for 37 exploratory purposes alone. . . 38 39 THE COURT: Just stop a sec. I just --

Yeah.

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41 MR. MOLSTAD:

the process Sawridge First Nation uses to determine membership. I could not give you any more detail in that regard than my learned friend already has. The Public Trustee is fully aware of the process as she described it to you in her submissions. The third thing that you directed is that they could question about Sawridge membership definition. Well. they've been provided with a number of answers to undertakings with the assistance of Sawridge First Nation that includes their membership rules that makes it very clear in terms of the law that has been approved by the federal government and has been upheld by other courts, including the Federal Court for the Sawridge First Nation membership. they have that. It's also questioning about the status and number of Band membership applications currently awaiting a determination. They also have that. My friend, just so we're clear, refers to candidate children, and when she did so, she took you to part of the record, which I believe is in the affidavit of Mr. Bombak, that sets out these applications for beneficiary status. That's not an application for membership. That's an application for beneficiary status, and those aren't the candidate children. The candidate children would be children that could, or if they exist, be identified through the membership applications, and you have -- they have particulars of the number of membership applications by virtue of answers to undertakings.

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We submit that all of the questions in accordance with your order have been answered by the Sawridge Trustees with a great deal of assistance from the Sawridge First Nation, which my friend has acknowledged, and what we also submit that what they're requesting is outside of the scope of what this Court ordered that they were entitled to question about in terms of what was relevant and material to this matter. And if you look at some of the examples -- and I think we reprinted in -- on page 3 of our brief, which I think you have in front of you now, --

M-hm.

2526

27 THE COURT:

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29 MR. MOLSTAD:

-- the portions of the amended application in terms of what the Public Trustee is requesting -- you'll see at the bottom of page 3 halfway down, they want, from 1985 to present, all inquiries received about Sawridge membership for the process to apply for Sawridge membership and the responses to those inquiries. What does that have to do with minor children? Nothing, in our respectful submission. And the rest of those, two, three, four, --

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36 THE COURT: Well --

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38 MR. MOLSTAD: -- are the same, in our respectful submission.

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40 THE COURT: Well, why do you say that? Put a little more

41 meat on the bone there.

1 THE COURT: Just deflected you. 3 MR. MOLSTAD: In the reply brief of the Sawridge Trustees -- let me just find it here --4 6 THE COURT: Okay. So you're going to the? 7 8 MR. MOLSTAD: It's the reply brief --10 THE COURT: Reply brief. 11 12 MR. MOLSTAD: -- of the Trustees. It's filed August 21 of 2015. 13 14 THE COURT: Dealing with document production? 15 16 MR. MOLSTAD: Yes. 17 18 THE COURT: Okay. 19 20 MR. MOLSTAD: You'll see at tab 7 of this document -- and this 21 is found, I believe, in Mr. Bombak's affidavit as well -- the undertakings that have been 22 answered by Mr. Bujold, the deponent that was produced on behalf of the Sawridge Trustees, and this document and the document attached to Mr. Bombak's affidavit do not 23 do justice to the answers to undertakings. The answers to undertakings have been filed, 24 25 and they consist, if your copy is the same as mine, of four binders, and I encourage you, I 26 ask you to review those four binders before you make any decision with respect to 27 ordering production of documentation in relation to this matter. The answers contained in 28 these binders demonstrate unequivocally the cooperation and the work done by the 29 Sawridge First Nation through their executive director and executive counsel, 30 Mr. McKinney, in attempting to assist both the Court and the parties in relation to issues. 31 These answers filed in these proceedings in these four binders, in our respectful 32 submission, demonstrate that the disclosure to the Public Trustee has been excessive and it 33 has been beyond what is relevant and material. 34 35 But the objective here is to attempt to benefit those who are not benefitting from this 36 trust. No order was required for the Sawridge First Nation to provide relevant and 37 material producible records to the Sawridge Trustees, and of course, the law is, we 38 submit, fairly clear that a third party can't be compelled to produce records when these 39 records can be obtained through a party. As you've already heard, the Sawridge Trustees have advised that they're prepared to complete an affidavit of records, and you addressed 40 41 that earlier this morning, and until they do, we submit that any application as against a

was turned down by the chief and council, and then she appealed. She was able to make 1 2 submissions. Elizabeth Poitras was able to make submissions at that application. Ms. Poitras's understanding was that there was a secret vote but that ultimately Tracey 3 has been -- is -- became a member as a result of the appeal of the First Nation, and in 4 fact, if we look at page 128, she's been recently elected as a counsellor. And so if this is 5 to be a good indication, then here we have it, someone who fills in their application, has 6 7 gone through the process, was turned down by Band and by the chief and council but in 8 fact went to the appeal and was in fact granted membership, and so I would submit that 9 that in fact shows that the process is working, it's functioning, it has certainty to it because we know how these things work and in fact then would make a very good 10 11 definition for membership. 12 Okay. Can I --13 THE COURT: 14 But --15 MS. BONORA: 16 17 THE COURT: -- just stop you? I mean, you've been going on 18 at some length here. 19 20 MS. BONORA: I'm sorry. 21 I'm having trouble understanding how it's 22 THE COURT: pertinent to the application that I'm hearing in respect to Public Trustee asking for the 23 production of documents as against the Sawridge First Nation and where the primary 24 25 respondent is Mr. Molstad. Now, can you just --26 27 MS. BONORA: Yes. 28 -- put me in the picture why all of this has got 29 THE COURT: anything to do with deciding whether or not I should order the Sawridge First Nation to 30 31 produce information? 32 33 MS. BONORA: M-hm. So, Sir, I would submit that first of all Sawridge First Nation -- the process of having questions be asked of the Sawridge 34 Trustees and then us getting information from the Sawridge First Nation has been working 35 very well, and there's no need to have an affidavit of records from the Sawridge First 36 37 Nation because the information that's pertinent and relevant has been provided, and that's 38 why Mr. Molstad asked you to read the undertaking so you could see the extent of the 39 information that had been provided. 40 41 Secondly, in respect of the relevance of the information that's being requested from the

# TAB E

Chamberlain Hutchison

02:51:42 p.m.

01-29-2016

2 /9

Clerk's Stamp:

COURT FILE NUMBER:

1103 14112

COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL CENTRE

**EDMONTON** 

IN THE MATTER OF THE TRUSTEE ACT, R.S.A 2000, C. T-8, AS AMENDED

IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN, OF THE SAWRIDGE INDIAN BAND, NO. 19, now known as SAWRIDGE FIRST NATION, ON APRIL 15, 1985 (the "1985" Sawridge Trust")

BITERED 切护

**APPLICANTS** 

ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN. BERTHA L'HIRONDELLE, and CLARA MIDBO, as Trustees for the 1985

Sawridge Trust

**APPLICANT** in this Application

OFFICE OF THE PUBLIC TRUSTEE OF

**ALBERTA** 

**RESPONDENT** in this Application

THE SAWRIDGE FIRST NATION

DOCUMENT

APPLICATION BY THE OFFICE OF THE PUBLIC TRUSTEE OF ALBERTA FOR

PRODUCTION UNDER RULE 5.13.

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

**HUTCHISON LAW** 

#190 Broadway Business Square

130 Broadway Boulevard

Sherwood Park, AB T8A 3X1

Attention:

Janet L. Hutchison

Telephone:

(780) 417-7871

Pax:

(780) 417-7872

Email:

jhutchison@jlhlaw.ca

File:

51433 JLH

01-29-2016

# NOTICE TO THE RESPONDENT, SAWRIDGE FIRST NATION

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Justice.

To do so, you must be in Court when the application is heard as shown below:

Date: To be set by the Case Management Justice, but in any event prior to April 30,

2016 as directed in the Reasons for Judgment dated December 17, 2015

Time: To be set by the Case Management Justice

Where: Law Courts Building

1A Sir Winston Churchill Square, Edmonton, Alberta T5J 3Y2

Before: Justice D.R.G. Thomas in Chambers

Go to the end of this document to see what else you can do and when you must do it.

#### Remedy claimed or sought includes:

- The OPGT requests the Sawridge First Nation ("SFN") provide it with the following types of documents, the OPGT believes may be relevant and material to the issue of which assets, were to be, and were settled in the 1985 Trust:
  - a.) Band Council meeting minutes, Band Council Resolutions, or documents presented to or before, or approved by, Band Council in the 1970's, including records of transfers or any transfer documents, when land, hotel and other business assets acquired by the SFN were registered in Chief Walter Twinn's, George Twin's, Walter Felix Twin's, Samuel Gilbert Twin's, and David Fennel's names to hold in trust for the members of SFN, which assets were to be transferred to the 1982 Trust and ultimately into the 1985 Trust. [Source: Affidavit of Paul Bujold, filed September 13, 2011, para. 8];
  - b.) Band Council meeting minutes, Band Council Resolutions or documents presented to or before, or approved by, Band Council in the June 1982 meeting held at the Sawridge Band Office to address the transfer of all property held by Chief Walter Twinn, George Twin, Walter Felix Twin, Samuel Gilbert Twin and David Fennel in trust for the present and future members of the 1982 Trust, which assets were ultimately to be transferred into the 1985 Trust, that contain any information about the assets held by the individuals and/or the transfer to the Trust, , including records of transfers or any transfer documents. [Source-Affidavit of Paul Bujold, filed September 13, 2011, para. 10 and Exhibit B]

- c.) Band Council meeting minutes or documents presented to or before, or approved by, Band Council, including records of transfers or any transfer documents, at its April 15, 1985 Band Council meeting that would provide any greater detail or information regarding the transfer of assets from the 1982 Trust to the 1985 Trust, beyond that contained in the Band Council Resolution. [Source: Affidavit of Paul Bujold, filed September 13, 2011, Exhibit H]
- d.) Any documents SFN has in its possession or control, including records of transfers or any transfer documents, that would assist in identifying the specific additional assets that Mr. Bujold believes were later transferred from SFN or individuals holding the property in trust for SFN members and the dates and manner of transfer. [Source: Affidavit of Paul Bujold, filed September 13, 2011, para. 22]
- e.) Copies of SFN financial statements prepared prior to June 1, 1984 that would provide details of the assets which composed the transferred assets with a carrying value of \$17, 951, 590.00 as referred to in Note 16 to the June 1, 1984 Financial Statements provided at Undertaking #16 of Paul Bujold's Answers to Undertakings;
- f.) Further to item (e) above, any Band Council meeting minutes, Band Council resolutions or documents presented to or before, or approved by, Band Council, or minutes of meetings of Band members, including records of transfers or any transfer documents, or other documentation regarding the December 17, 1983 transfer of assets to the 1982 Trust, and ultimately 1985 Trust;
- g.) Any documentation that would assist in understanding if the 1985 Contribution from Beneficiaries related to any of the assets that were being held by individuals in trust for the SFN members and that were later settled in the Trust. [ Source- Sawridge Trust Financial statements dated December 31, 1986 (produced as part of Paul Bujold's Answers to Undertakings, UT #16) which refers in Note 7 to a 1985 "contribution from beneficiaries" ]
- h.) Copies of the series of demand promissory notes held in trust by Walter Twinn for the SFN band members, as referred to in the January 21, 1985 Demand Debenture, which was later transferred to the Trust, as well as any Band Council meeting minutes or documents presented to or before, or approved by, Band Council relating to the promissory notes or the 1985 Demand Debenture. [Source: Paul Bujold Answers to Undertakings, UT #161
- i.) Band Council meeting minutes, Band Council resolutions, or documents presented to or before, or approved by, Band Council, including records of transfers or any transfer documents, in relation to the transfers of \$3,706,060.00 and \$17,951,590.00 to the Trust in 1985 and 1984 respectively, that would identify that specific assets that comprised the transfers, if not already produced in response to the above requests;

780-426-1293

- j.) Any documentation in the SFN's possession and control that would assist in determining what assets were intended to be included in the Trust Settlement, the 1982 Trust, or the Declaration of Trust, or any documentation that would confirm the specific transfers from the 1982 Trust to the 1985 Trust. [Source Paul Bujold Answer to Undertaking #18, Response from Justice Canada suggesting SFN would be the party that would best be able to locate the documents requested.]
- 2. The OPGT bases its request, including its assessment of whether SFN may have control of the requested records and their relevance and materiality, on the information available in the proceeding as of today's date. It must be noted that the OPGT has not had the benefit of questioning the Trustee's affiant, Paul Bujold, on the documents produced regarding assets, on his answers to undertakings or on his Affidavit of Records, dated November 2, 2015, as of the date of filing.

#### Grounds for making this application:

- This application is made under direction of the Court as set out in the December 17, 2015
  Reasons for Judgment. The Public Guardian and Trustee is filing its application under
  revised terms from the December 17, 2015 judgment, which is under appeal.
- The Public Guardian and Trustee is also filing this application despite the fact that the Parties have also provided the Court with a signed consent order for an extension of time, to file the within application.
- 3. The OPGT reserves the right to file an amended application once its Questioning of Paul Bujold on asset documentation has actually been held and upon the result of Appeals 1603-0029AC and 1603-0026AC.

#### Material or evidence to be relied upon:

- 1. All relevant materials filed to date in Court of Queen's Bench Action 1103 14112, including all transcripts, affidavits, excerpts of evidence and answers to undertakings;
- 2. Such further and other materials as Counsel may advise and this Honourable Court may allow.

#### Applicable rules:

- 1. Alberta Rules of Court, Alta Reg 124/2010, Rule 5.13;
- 2. Such further and other rules as Counsel may advise.

#### Applicable Acts and regulation:

- 1. Public Trustee Act, SA 2004, c P-44.1
- 2. Such further and other Acts and regulation as Counsel may advise.

Any irregularity complained of or objection relied on:

How the application is proposed to be heard or considered:

In chambers before Justice Thomas, the case management justice assigned to this file.

#### WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on that date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

# TAB F

COURT FILE NUMBER:

1103 14112

COURT:

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE:

**EDMONTON** 

IN THE MATTER OF THE TRUSTEE ACT, R.S.A 2000, C. T-8, AS AMENDED

IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN, OF THE SAWRIDGE INDIAN BAND, NO. 19, now known as SAWRIDGE FIRST NATION, ON APRIL 15, 1985 (the "1985" Sawridge

Trust")

**APPLICANTS:** 

ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE, and CLARA MIDBO, as Trustees for the 1985

Sawridge Trust

APPLICANT in this Application:

OFFICE OF THE PUBLIC TRUSTEE OF

ALBERTA

RESPONDENT in this THE SAWRIDGE FIRST NATION Application:

#### QUESTIONING ON AFFIDAVIT

0F

#### PAUL BUJOLD

E. H. Molstad, Q.C.

For Sawridge First Nation

D. C. E. Bonora, Ms.

For Sawridge Trustees

J. L. Hutchison, Ms.

For Office of the Public Trustee of Alberta

Allison Hawkins, CSR(A)

Court Reporter

Edmonton, Alberta July 27, 2016

= A.C.E. Reporting Services Inc. =Certified Court Reporters

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QUESTIONING OF PAUL BUJOLD	PAGE
Questioned by Mr. E. H. Molstad	5
Questioned by Ms. D. C. E. Bonora:	78

#### **INDEX OF UNDERTAKINGS**

(Undertakings are provided for your assistance.

Counsel's records may differ. Please check to
ensure that all undertakings have been listed
according to your records.)

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

#### NO. DESCRIPTION

PAGE

Advise what the value of the Trust was 39 in 2015, as well as the value of the Trust today.

# **INDEX OF EXHIBITS**

<u>NO .</u>	DESCRIPTION	PAGE
1	Letter dated June 17th, 2016, from	11
	Hutchison Law	
2	Letter from Parlee McLaws addressed to	12
	Ms. Hutchison setting out the schedule	
	agreed to between the Office of the	
	Public Trustee and Sawridge First Nation	
3	Email from Hutchison Law dated July 7th,	13
	2016, with a letter attached to it	
4	Letter without enclosures from Parlee	14
	McLaws to Hutchison Law, Ms. Hutchison,	
	on behalf of the Public Trustee	
5	Email from Ms. Bonora attaching a draft	28
	of the clarification on the transfer	
	issued for review and comments	
6	Letter from Mr. Poretti to Ms. Hutchison	29
	and McLennan Ross dated July 26, 2016,	
	enclosing a proposed consent order	
7	Order of Mr. Justice Thomas, signed by	73
	all counsel in the proceedings	
8	Copy of letter sent to the Public	77
	Trustee dated July 27, 2016	

1	PAUL BUJOLD, SWORN AT 9:37 A.M.,
2	QUESTIONED BY MR E. H. MOLSTAD:
3	Q MR. MOLSTAD: So I first of all, I
4	thought I'd just explain why we're here. The
5	Mr. Bujold, the questioning today is in relation to
6	your affidavits and the evidence that the Public
7	Trustee has tendered and purports to rely upon in
8	their applications, pursuant to rule 5.13,
9	compelling the Sawridge First Nation to produce
10	documents, and Sawridge First Nation is named as a
11	respondent in these two applications, and I, of
12	course, represent Sawridge First Nation.
13	MR. MOLSTAD: And I understand,
14	Ms. Hutchison, that you want to make a statement
15	for the record?
16	MS. HUTCHISON: Yes. Thank you very much,
17	Mr. Molstad. Just wanted to make note of the fact
18	that as of this morning, there has been an
19	agreement on the trustees' clarification on assets
20	consent order, and in light of that consent order
21	being finalized, and and assuming, I should say,
22	that it is finalized, the Public Trustee's
23	instructions are to withdraw their rule 5.13
24	application on assets, so that will change the
25	scope of the 5.13 applications before the Court.
26	And, Mr. Molstad, the other
27	the other point we just wanted to put on the

1	record, we're not entirely clear about what the
2	proposed scope of the questioning is today. Rather
3	than waste anyone's time and resources on multiple
4	objections or interruptions, we're we're going
5	to attend and listen, and we'll review the
6	transcript after the fact. Please don't take our
7	silence as an acceptance that the evidence is
8	relevant or even admissible, but we'll address
9	those issues to the Court, as opposed to raising
10	individual objections to the questions.
11	MR. MOLSTAD: That's fine. Likewise, the
12	evidence that you have tendered is, in our
13	respectful submission, in many respects,
14	inadmissible, but unfortunately, from our
15	perspective, much of it is incorrect, and so we
16	will have to put questions to this witness to
17	correct that evidence, but I understand your
18	position.
19	In terms of the comments you
20	made about the consent order, as I understand it,
21	and I want to be clear, I understood you to say
22	that assuming the consent order is agreed to and
23	ultimately filed, which Sawridge First Nation has
24	no control over, you will then withdraw your
25	application; is that correct?
26	MS. HUTCHISON: Mr. Molstad, to be clear, my
27	understanding is that we haven't secured consent

1	from Trustee Twinn at this point in time. So if it
2	were a situation where the consent order could not
3	go forward because of Trustee Twinn's lack of
4	consent, it could affect what the OPGT does with
5	the 5.13 assets application. Although, frankly, I
6	would hope that the other parties would proceed to
7	present that order to the Court and ask it for
8	endorsement, in which case the OPGT would still be
9	withdrawing its 5.13 application. I'm hopeful that
10	with or without Trustee Twinn's consent, that order
11	that everyone's worked quite hard to prepare, would
12	be presented to the Court. So as long as there's
13	no issue that the consent order on asset
14	clarification is presented to the Court on August
15	21st or 24th for approval, the assets
16	application the 5.13 assets application will be
17	withdrawn.
18	I and perhaps we can ask
19	I realize we're all dealing with this sort of on
20	short notice this morning. Ms. Bonora, would you
21	agree that we would present that order to the Court
22	regardless of Trustee Twinn's consent?
23	MS. BONORA: Yes. I we're very happy to
24	have your consent, and on that order, and we
25	would be prepared to go ahead and join forces to
26	say that should go ahead, even if Catherine Twinn
27	objected, we'd leave her to make her objections, if

```
she decided to do that.
 1
      MS. HUTCHISON:
                                 Okay. So, Mr. Molstad, on
 2
           that basis, we are withdrawing our 5.13 assets
 3
            application. Everyone in this room is agreed on
 4
           the assets clarification.
 5
                                 So --
       MR. MOLSTAD:
 6
                                 And I will -- I will confirm
       MS. HUTCHISON:
 7
            that in a letter to counsel and the Court once I'm
 8
            not sitting at this boardroom table.
 9
                                 Yeah. And -- and when you say
       MR. MOLSTAD:
10
            you're withdrawing the 5.13 application, in
11
            relation to the asset transfer?
12
                                 To the asset transfer.
       MS. HUTCHISON:
13
                                 Yeah.
       MR. MOLSTAD:
14
                                 And as you're aware, the
       MS. HUTCHISON:
15
16
            5.13 application on membership is going forward on
            the basis outlined in our correspondence to you,
17
            essentially, a reporting to the Court.
18
                                 Yeah, we'll deal with that.
19
       MR. MOLSTAD:
                                 And I will now be quiet,
       MS. HUTCHISON:
20
            Mr. Molstad.
21
                                 okay.
       MR. MOLSTAD:
22
       MS. HUTCHISON:
                                 This is your transcript, so...
23
                                 All right.
24
       MR. MOLSTAD:
                                 All right. Mr. Bujold, my
25
           MR. MOLSTAD:
       Q
            questioning of you today, I will refer to the 1982
26
            Sawridge First Nation Trust as the 1982 Trust, and
27
```

```
you'll understand what I'm referring to?
 1
            Yes, I will.
 2
       Α
            And I'll refer to the 1985 Sawridge First Nation
 3
       Q
            Trust as the 1985 Trust, and you'll understand what
 4
            I'm referring to?
 5
            Yes, I will.
 6
       Α
            And I will refer to the 1986 Sawridge First Nation
 7
       Q
            Trust as the 1986 Trust --
 8
 9
       Α
            okay.
            -- and you'll understand what I'm referring to?
10
       Q
            I will.
11
       Α
            And in terms of the trustees of the 1985 Trust and
12
       0
            the 1986 Trust, I will refer to them as the
13
            Sawridge trustees, and that -- you'll understand
14
            what I'm referring to?
15
            I will.
16
       Α
            And today we're going to ask you questions in
17
       Q
            relation to two affidavits and also evidence that's
18
            been tendered by the Public Trustee. The
19
            affidavits that we're going to be asking questions
20
            in relation to are your affidavit that was sworn on
21
            August 30th, 2011, and filed September 6th, 2011.
22
            Do you have that in front of you?
23
            Yes, I do.
24
       Α
25
       MR. MOLSTAD:
                                  Excuse me just for one moment,
26
            please.
27
       MS. BONORA:
                                  Yeah.
```

```
okay.
 1
       MR. MOLSTAD:
                                  And this affidavit that was
 2
       0
            MR. MOLSTAD:
            sworn on August 30th, 2011, was sworn by you, sir;
 3
            is that correct?
 4
            That's -- that's right, sir.
 5
       Α
       COURT REPORTER:
                                  Sorry?
 6
            That's right, yes.
 7
       Α
            MR. MOLSTAD:
                                  And the other affidavit that I
 8
       0
            will question on is the affidavit sworn on
 9
            September 12th, 2011, filed September 13th, 2011,
10
11
            and this affidavit you have before you, and it was
            sworn by you?
12
13
            I do, yes.
       Α
                  Now, your counsel has provided you with
14
            Yeah.
       Q
            copies of the correspondence in relation to these
15
            proceedings, as I understand it --
16
17
       Α
            Yes.
            -- that have been exchanged between counsel?
18
       Q
19
       Α
            Yes.
            And -- now, I'm showing you -- I'm showing you a
20
       Q
            letter dated June 17th, 2016, from Hutchison Law
21
            addressed to four counsel in relation to these
22
            proceedings. You received a copy of this?
23
            I did.
24
       Α
                                  We would ask that this be
25
       MR. MOLSTAD:
            marked as an exhibit, please.
26
27
```

1		EXHIBIT 1:
2		Letter dated June 17th, 2016, from
3		Hutchison Law
4	Q	MR. MOLSTAD: So if you could just take a
5		look at Exhibit 1. Do you have Exhibit 1 in front
6		of you, sir?
7	Α	I do.
8	Q	On page 2 of this letter, you'll see at the top of
9		the page, Ms. Hutchison indicates that in relation
10		to the 5.13 application regarding the membership,
11		the the OPGT, which refers to the Public
12		Trustee, will be filing a brief written submission
13		on that application and then goes on to say that
14		the OPGT, which is the Public Trustee, will not be
15		seeking to file affidavit evidence in relation to
16		that application and anticipates its submissions
17		will be relatively brief, similar in length to the
18		Sawridge First Nation's submissions.
19		That's the position that was
20		communicated both to yourself and the Sawridge
21		First Nation at that time; is that correct?
22	Α	That's correct.
23	Q	And if you look at the bottom of the second page of
24		Exhibit 1, they you'll see in the third-last
25		paragraph, they summarize what they intend to do in
26		relation to the 5.13 assets application, and in the
27		last paragraph, they indicate that the Public

1	Trustee will not be filing affidavit evidence in
2	support of this submission. And, also, they
3	indicate that they will not be seeking to conclude
4	Paul Bujold's questioning prior to the August 24th,
5	2016, hearing, and go on to explain why they take
6	that position.
7	This also was a position that
8	was put to both the Sawridge trustees and Sawridge
9	First Nation; correct?
10	A That's correct, yes.
11	Q Now, the next document I want to take take you
12	to is is an email to your counsel, which I'm
13	showing you now, sir. It's this one. Sorry. And
14	it's a it attaches a letter from Parlee McLaws
15	addressed to Ms. Hutchison setting out the schedule
16	agreed to between the Office of the Public Trustee
17	and Sawridge First Nation. You received a copy of
18	this, sir, did you?
19	A I did.
20	MR. MOLSTAD: I'd like to mark that as the
21	next exhibit.
22	EXHIBIT 2:
23	Letter from Parlee McLaws addressed to
24	Ms. Hutchison setting out the schedule
25	agreed to between the Office of the
26	Public Trustee and Sawridge First Nation
27	Q MR. MOLSTAD: The next document is an email,

1		sorry, which I'm showing you, which is from
2		Ms. Hutchison's office dated July 7th, 2016, and a
3		letter attached to it. You received a copy of this
4		through your counsel; is that correct?
5	Α	I did.
6	MR.	MOLSTAD: Can we mark that as the next
7		exhibit, please?
8		EXHIBIT 3:
9		Email from Hutchison Law dated July 7th,
10		2016, with a letter attached to it
11	Q	MR. MOLSTAD: Now, Exhibit 3, which is the
12		email and the letter, includes a description of the
13		evidence that the Public Trustee will rely upon in
14		relation to the 5.13 membership application and the
15		5.13 assets application; is that correct?
16	А	Yes, it does.
17	Q	And part of this evidence is in relation to both
18		applications, answers to undertakings of yourself,
19		and, specifically, some are certain undertakings.
20		Do you see that?
21	Α	Yes.
22	Q	And as I understand it, the Public Trustee has not
23		questioned you at this point in time in relation to
24		any of these undertakings that you've provided; is
25		that correct?
26	Α	That's correct.
27	Q	Now, the next document is a letter without the

1		enclosures, it should be now, from our offices to
2		Hutchison Law, Ms. Hutchison, on behalf of the
3		Public Trustee. It does not have the enclosures in
4		it. This letter was received a copy of it
5		received by you through your counsel; is that
6		correct?
7	А	That's correct.
8	MR.	MOLSTAD: Can we mark that as the next
9		exhibit, please? Thank you.
10		EXHIBIT 4:
11		Letter without enclosures from Parlee
12		McLaws to Hutchison Law, Ms. Hutchison,
13		on behalf of the Public Trustee
14	Q	MR. MOLSTAD: The the next document is
15		a an email, but it unfortunately attaches what I
16		consider to be confidential information, and I'm
17		just going to ask you some questions about it,
18		rather than mark it, because of that, Mr. Bujold.
19		It's an email from Ms. Bonora to Janet Hutchison,
20		counsel for the Public Trustee, and and it
21		encloses the list an updated list of the minors,
22		and what it provided the Public Trustee with at
23		that time was a list of the minors with the changes
24		since 2011, and that would have been as at
25		April 5th, 2016; correct?
26	А	That's correct.
27	Q	And it is also noted that eight of the minors

```
listed had become adults, and -- and of the eight
 1
            that are listed, two would become adults that year;
 2
            correct?
 3
            That's correct.
 4
       Α
            It also indicated there were five new minors;
 5
       0
            correct?
 6
            That's correct.
 7
       Α
            And you indicate in this email that you are only
 8
       0
            providing this list to you and Mr. Molstad, as the
 9
            minors' personal information is provided, and thus
10
11
            it's not appropriate to share with all the parties;
            correct?
12
            That's correct, yes.
13
       Α
            You state in this email as well that it -- it's
14
       Q
            your experience with the Public Trustee that the
15
            Public Trustee will not continue to act for a minor
16
            once they become an adult, and you state that you
17
            assume that that is true in your case, especially
18
            given the December 17th, 2016, directions. And you
19
            ask that the Public Trustee confirm that it will
20
            only be representing the minors on the list in
21
            accordance with that decision and not representing
22
            the adults. That's what you've asked her to
23
            advise: correct?
24
25
            That's right.
       Α
            Did you receive a response to that?
26
       Q
            Not that I know of.
27
       Α
```

```
I'll just get that back, then, from you.
       Q
 1
            I'm not going to -- or you can keep that.
                                                        It's
 2
            your document.
 3
 4
                                  So I want to take you now to
            the affidavit that was sworn by yourself
 5
            August 30th, 2011, and filed September 6, 2011.
 6
            you have that in front of you?
 7
            T do.
 8
       Α
            I'd like to direct your attention to paragraphs 10,
 9
       0
            11, and 12 of this affidavit, where you describe a
10
            considerable amount of information in relation to
11
            beneficiaries and potential beneficiaries.
12
            see that?
13
            I do.
14
            Now, did you -- I understand you requested the
15
       Q
            assistance from the Sawridge First Nation in
16
            compiling these lists?
17
            T did.
18
       Α
            And can you also confirm that the Sawridge First
19
       Q
            Nation cooperated with you fully and provided you
20
            with the information --
21
            It did.
22
       Α
23
            -- you'd requested?
       Q
24
            It did, yes.
       Α
25
            Other than with respect to legislation regarding
       Q
            protection and privacy, did the Sawridge First
26
27
            Nation ever refuse to provide you with any
```

```
information requested?
 1
            No, they didn't.
 2
       Α
            Okay. I'll just now turn you to the next
 3
       Q
            affidavit, the affidavit of yourself sworn
 4
            September 12th, 2011, and filed September 13th,
 5
            2011. Do you have that in front of you?
 6
            I do.
 7
       Α
            In paragraph 1, you state that you're the chief
 8
       Q
            executive officer of the Sawridge Trust. You're
 9
            speaking of the 1985 Trust and the 1986 Trust; is
10
            that correct?
11
            That's correct.
12
       Α
            And when did you first become chief executive
13
       Q
            officer?
14
15
            In September 2009.
       Α
16
       Q
            Okay. And in paragraph 3, it -- it states who the
            trustees were of the '85 Trust at that time.
17
            Who -- who are the trustees of the '85 -- 1985
18
            Trust today?
19
            Bertha L'Hirondelle, Catherine Twinn, Roland Twinn,
20
            Justin Twin, and Margaret Ward.
21
            Okay. And is Margaret Ward sometimes referred to
22
       Q
23
            as Peggy Ward?
            She is.
24
       Α
            And in paragraph 4 and 5 of your affidavit, it's
25
       Q
26
            indicated that the trustees would like to make
27
            distributions in relation -- or from the 1985 Trust
```

1		for the benefit of beneficiaries, and concerns have
2		been raised on these two matters: One, regarding
3		the definition of beneficiaries contained in the
4		1985 Trust; and, secondly, the transfer of assets
5		into the 1985 Trust.
6		And as I understand it, the
7		Sawridge trustees are seeking to expand the
8		definition of beneficiaries of the 1985 Trust to
9		include all members of the Sawridge First Nation?
10	А	That's correct.
11	Q	And and the purpose of that objective on the
12		part of the Sawridge trustees is to eliminate
13		discrimination?
14	Α	That's correct.
15	Q	And, in fact, based upon the definition of the
16		beneficiaries of the 1985 Trust, persons who were
17		declared by the Court to be members pursuant to
18		formally Bill C-31, have been excluded as
19		beneficiaries of the 1985 Trust?
20	Α	That's correct because they're women who were
21		enfranchised
22	Q	Right.
23	А	through marriage.
24	Q	And in terms of the investigation that you've done
25		in reviewing the records and gathering the
26		documents that you've gathered, I understand that
27		you have satisfied yourself that you have seen all

1		of the documents and all of the information with
2		respect to the transfer of the assets from the 1982
3		Trust to the 1985 Trust, and that in other
4		words, you've exhausted your efforts in that
5		respect?
6	A	That's correct.
7	Q	And all of the documents that you've gathered
8		demonstrate that all of the assets of the 1982
9		Trust were transferred to the 1985 Trust, and
10		that's why you seek the Court's order approving
11		that transfer?
12	Α	That's correct.
13	Q	In paragraph 9 of your affidavit, you make
14		reference to Ronald Ewaniuk, CA. Do you know when
15		Mr. Ewaniuk first became involved with the 1985
16		Trust and the 1986 Trust?
17	Α	I am not sure exactly of the date. I I could
18		research the documents that I've got to see if I
19		can find that.
20	Q	Yeah. Was it you know, he was involved for
21		quite some time, though, wasn't he?
22	Α	Yes, he was. He was involved in different
23		capacities, so in the early days, he was involved
24		as a partner as a senior partner of Deloitte
25	Q	Okay.
26	Α	Touche.
27	Q	Yeah.

1	Α	And later, he was involved as a as a consultant.
2	Q	And when you contacted him and made an effort to
3		get what information he had, would it be correct to
4		state that it was his information that all of the
5		assets of the in the 1982 Trust were transferred
6		to the 1985 Trust?
7	А	Yes.
8	Q	And that was the information of the Sawridge First
9		Nation that was provided to you?
10	А	That's right.
11	Q	Paragraph 10 of your affidavit sworn
12		September 12th, 2011, refers to Exhibit B, and if
13		you just go to Exhibit B in the affidavit.
14	MS.	HUTCHISON: Sorry, Mr. Molstad. Exhibit B
15		or D?
16	MR.	MOLSTAD: B. B as in Bob. Yeah.
17	MS.	HUTCHISON: Thank you.
18	Q	MR. MOLSTAD: And you found Exhibit B there?
19	Α	Yes, I did.
20	Q	The you'll see that in that this is a a
21		record of the meeting of the trustees and settlers
22		of the Sawridge Band Trust, and that in
23		paragraph 3, it it's they include a a
24		resolution that the Sawridge trustees then
25		instructed the solicitors to prepare the necessary
26		documentation to transfer all property presently
27		held by themselves to the Trust and to present the

1		documentation for review and approval. I just want
2		to point out that it does describe all property,
3		and from your investigation, is it your information
4		that that happened?
5	Α	Yes, it is.
6	Q	Do you have any information to suggest it did not
7		happen?
8	Α	None at all.
9	Q	Yeah. Paragraph 11 and 12 of your affidavit refers
10		to Exhibit D, and I'd like to take you to Exhibit D
11		of your affidavit. Are you there?
12	Α	I am.
13	Q	Yeah. The second page of Exhibit D and this is
14		a an agreement between the trustees of the
15		old or I assume this is the '82 Trust. Is that
16		your information, in the 1985 Trust?
17	Α	It is, yes.
18	Q	Yeah. And on page 2, it it describes that each
19		of the old trustees hereby transfers all of his
20		legal interest in each of the properties listed in
21		Appendix A attached hereto to the new trustees as
22		joint tenants to be held by the new trustees on the
23		terms and conditions set out in the Sawridge Band
24		Trust and is part of the said Trust.
25		Is it your information that
26		that, in fact, happened?
27	Α	Yes, it is.

1	Q	Now, in paragraph 13 to 15 of your affidavit, this
2		refers to the legislation that we know previously
3		referred to as Bill C-31, and you're, I assume,
4		familiar with the fact that the Sawridge First
5		Nation challenged the constitutionality of the
6		legislation in litigation where they asserted a
7		right that they, as a First Nation, had the right
8		to determine their membership?
9	A	Yes, I am aware of that.
10	Q	And it was during that challenge that the women
11		that include, for example, Ms. Poytras were ordered
12		to be added as members of the Sawridge First
13		Nation, and as a result of the way in which the
14		1985 Trust was structured, she did not become a
15		beneficiary when the Court declared her to be a
16		member of the Sawridge First Nation?
17	A	No.
18	Q	Is that correct?
19	Α	That's correct.
20	Q	Yeah. So if I go to paragraph 19, it refers to
21		Exhibit H. Can I just get you to look at that?
22		Now, this is a a
23		Exhibit H is the resolution of the trustees, again,
24		transferring all of the assets of the 1982 Trust to
25		the 1985 Trust. Do you agree with that?
26	Α	Yes, I do.
27	Q	And and that that, as you've already

a a		to vicial have and that went took alone?
1		testified, happened? That event took place?
2	А	Yes, it did.
3	Q	And what we know, at this time, was that the
4		purpose of the 1985 Trust, when it was structured,
5		was to protect the assets of that Trust from those
6		persons who might be forced upon the Sawridge First
7		Nation as members under what was then Bill C-31?
8	A	That's correct.
9	Q	And and having reviewed all of the records that
10		you've been able to gather, do you have any
11		information that the resolution, Exhibit H, was not
12		carried out?
13	Α	None.
14	Q	okay.
15	Α	None whatsoever.
16	Q	Would you agree with me that based upon the purpose
17		of the transfer of the assets from the 1982 Trust
18		to the 1985 Trust, there would be no reason for the
19		Sawridge trustees, the Sawridge First Nation, or
20		chief and council to withhold the transfer of any
21		assets?
22	A	Not that I could think of.
23	Q	They were trying to protect these assets, so their
24		objective was to transfer the assets?
25	A	We had a telephone conversation with Morris
26		Cullity, who was the the solicitor working with
27		them at the time on the transfer and on the

```
1
           structure of the '85 Trust.
           M-hm.
 2
      Q
           His -- in -- in his view, the intent of the 1985
 3
      A
           Trust was simply to protect the assets, pending the
 4
 5
            completion of the constitutional challenge. Once
           that was complete, the intent was to merge the two
 6
           Trusts back to -- using the 1986 Trust definition,
 7
           to go back to that and merge the two Trusts.
 8
 9
      Q
           But -- but in terms of the 1985 Trust, in -- in --
           in those circumstances, both the Sawridge First
10
            Nation and the trustees would be motivated to
11
            ensure that all assets were transferred?
12
           That's right. Absolutely.
13
      A
           The reason is to fulfill the purpose at that time?
14
      Q
           That's right. And to protect those assets.
15
      A
           Yeah.
16
      Q
17
      A
           Yes.
            If you look at -- at paragraphs 9 to 28 of this
18
       Q
            affidavit -- and I don't want you to rush through
19
                 Just take a look at them because a lot of this
20
            information was information that you obtained from
21
            the Sawridge First Nation; is that correct?
22
23
           That's correct, yes.
       Α
24
           And I think you've confirmed that Sawridge First
      0
           Nation was cooperative, and they were cooperative
25
           in providing this information as well?
26
27
           They were, yes.
      A
```

1	Q	In paragraph 20 of the affidavit sworn
2		September 12th, 2011, it refers to Exhibit I, and
3		can I just take you to that exhibit?
4	A	okay.
5	Q	This is a document entitled "Sawridge Band
6		Resolution" and has a number of signatures which
7		appear to be, obviously, signatures of persons in
8		addition to the chief and council of the Sawridge
9		First Nation. Would you agree with that?
10	A	Yes, I would.
11	Q	And this recites, in the first paragraph, that the
12		trustees of the 1982 Trust have authorized a
13		transfer of the Trust assets to the trustees of
14		what is, essentially, the 1985 Trust; is that
15		correct?
16	A	That's correct.
17	Q	And the second paragraph recites that these assets
18		have actually been transferred, and that's a
19		reference to the assets of the 1982 Trust having
20		been already transferred to the 1985 Trust; is that
21		correct?
22	A	That's correct.
23	Q	And it would appear that the Sawridge First Nation,
24		in the last paragraph of this document, is, for
25		whatever reason, approving and ratifying this
26		transfer?
27	A	That's correct.

1	Q	Okay. Paragraph 23 and 24 of your affidavit. You
2		indicate that the transfer was carried out under
3		the guidance of accountants and lawyers, and based
4		upon your review and a review of all of the
5		information that you gathered, would you agree that
6		it supports the proposition that all property in
7		the 1982 Trust was transferred to the 1985 Trust?
8	Α	Yes, I do.
9	Q	I I want to confirm what the Sawridge trustees
10		are not seeking in relation to their efforts to
11		normalize the 1985 Trust and be in a position to
12		provide benefits to beneficiaries, and can you just
13		confirm that the Sawridge trustees do not seek any
14		declaration or remedy in relation to the assets
15		before 1985?
16	Α	That's correct.
17	Q	And the Sawridge trustees do not seek any
18		declaration or remedy in relation to the assets
19		held in the 1982 Trust?
20	Α	That's correct.
21	Q	And the Sawridge trustees do not seek any
22		declaration or remedy in relation to an accounting
23		of the assets in the 1982 Trust?
24	Α	That's correct.
25	Q	And the Sawridge trustees do not seek any
26		declaration or remedy in relation to an accounting
27		of the assets in the 1985 Trust?

1	A	That's correct.
2	Q	And the Sawridge trustees do not seek any
3		declaration or remedy in relation to assets prior
4		to the 1982 Trust?
5	A	That's correct.
6	Q	And this order being sought by the Sawridge
7		trustees does not prevent a beneficiary from
8		seeking an accounting of the 1985 Trust?
9	A	That's correct.
10	Q	Do you have any information that there are any
11		other relevant documents that relate to the
12		transfer of assets from the '82 Trust to the 1985
13		Trust that have not been produced?
14	A	I no. I think the search was exhaustive.
15	Q	Yeah. In paragraph 28 of your affidavit, you state
16		that: (As read)
17		To unravel the assets of the 1985
18		Trust after 26 years would create
19		enormous costs and will likely
20		destroy the Trust.
21		Could you just give a brief explanation of what you
22		mean there?
23	Α	Well, if if the 1985 Trust were to fail, all the
24		assets because the 1982 Trust no longer exists,
25		all the all the assets would either have to be
26		sold and and they're the results then
		sold and and they're the results then distributed among the beneficiaries, but we'd first

1		have to identify the beneficiaries. Or the Court
2		could order a return of those assets to the 1982
3		Trust, and so it would essentially destroy the 1985
4		Trust.
5	Q	And the cost of that happening, would it be to the
6		detriment of the beneficiaries?
7	A	Oh, it would be enormous detriment to the
8		beneficiaries because of all of the costs for
9		assessment, for sale, for transfer would all be
10		taken out of the Trust, and it would, in essence,
11		destroy the not only the assets of the 1985
12		Trust, but the assets of the 1986 Trust, since the
13		two are intertwined.
14	Q	Yeah. I have another document I want to put to
15		you. It's a an email from your counsel,
16		Ms. Bonora, to other counsel, which attaches a
17		draft of the clarification on the transfer issued
18		for review and comments and proposes that if this
19		clarification is acceptable, a consent order could
20		be drafted. You received a copy of this, did you?
21	Α	I did.
22	MR.	MOLSTAD: I wonder if that could be
23		marked as an exhibit, please.
24		EXHIBIT 5:
25		Email from Ms. Bonora attaching a draft
26		of the clarification on the transfer
27		issued for review and comments

Q	MR. MOLSTAD: And there's another document I
,	want to put to you. It's a letter from
	Ms. Hutchison to counsel I'm sorry. It's from
	Mr. Poretti to Ms. Hutchison and McLennan Ross
	dated July 26, 2016, enclosing a proposed consent
	order. You received a copy of this?
А	I did.
MR.	MOLSTAD: I'd like to mark this as an
	exhibit, please.
	EXHIBIT 6:
	Letter from Mr. Poretti to Ms. Hutchison
	and McLennan Ross dated July 26, 2016,
	enclosing a proposed consent order
Q	MR. MOLSTAD: Now, I want to turn now to
	you the questioning on affidavit of yourself.
	Do you have a copy of that transcript with you?
А	I do.
Q	This is a transcript of the questioning on your
	affidavits that was conducted on the 27th and 28th
	of May 2014, which we're advised will be relied
	upon by the Public Trustee in relation to these
	applications, and I have a few questions about your
	evidence in this transcript.
	If you go to page 9 of the
	transcript and I think that we talked already
	about who the trustees are. How many of the five
	trustees are members of chief and council of the
	MR. Q

Sawridge First Nation? 1 2 Α One. And who is that? 0 Roland Twinn. 4 Α And Ms. Catherine Twinn is also a trustee of the 5 Q Sawridge Trust; is that correct? 6 7 That's correct. Α And in terms of Ms. Catherine Twinn's roles with 8 0 the First Nation, she was part of the Sawridge 9 First Nation membership committee for many years? 10 11 That's right. Α Ms. Catherine Twinn was also one of the legal 12 Q 13 counsel who acted for the Sawridge First Nation in the lawsuit where the Sawridge First Nation was 14 15 challenging the constitutionality of Bill C-31? That's correct. 16 And -- and do you know if Ms. Catherine Twinn also 17 0 participated in preparing the Sawridge First Nation 18 membership code? 19 As far as I know, she did, yes. 20 Α Yeah. And Ms. Catherine Twinn is an elector of the 21 0 22 Sawridge First Nation? 23 That's right. Α And Ms. Catherine Twinn is also a beneficiary of 24 Q both the 1985 Trust and the 1986 Trust? 25 26 Yes, so far as we're able to determine on the 1985 Α 27 Trust.

1	Q	Okay. And since these trusts were first
2		established, both the 1985 Trust and the 1986
3		Trust, the trustees have included members from the
4		same family and also members from chief and
5		council; correct?
6	Α	That's correct.
7	Q	And do you know who the members of chief and
8		council are today?
9	Α	Yes.
10	Q	And who are they?
11	Α	Chief Roland Twin, Councillor Tracey
12		Poitras-Collins, and councillor who's the third
13		one?
14	Q	Is it Darcy Twin?
15	Α	Yes, Darcy. Sorry. My mind was blanking.
16	Q	Yeah. And when you say Councillor Tracey, it's
17		Councillor Tracey Poitras-Collins, is it?
18	Α	Poitras-Collins, yes.
19	Q	Yeah. And in relation to your efforts to have
20		these trusts normalized, the Sawridge First Nation
21		provided you with much of their records, including
22		their code of conduct, their constitution, their
23		Governance Act, and other documentation, whenever
24		requested?
25	Α	That's correct.
26	Q	And we've asked you about the documents, but do you
27		believe that after all of your efforts to gather

1		documents and to speak to people who have
2		involvement in historically and to make written
3		inquiries of those persons, that you have all of
4		the information that still exists in relation to
5		the transfer of the assets from the 1982 Trust to
6		the 1985 Trust?
7	A	Yes, I think I do.
8	Q	If I can I'll get you to go to page 45 of the
9		transcript. I'm just going to read to you part of
10		this transcript, beginning at line 19: (As read)
11		Q Do you have any information to
12		indicate that the assets that
13		individuals were holding between
14		the early 1970s and 1982, that
15		some of those assets were not
16		ultimately transferred into the
17		1982 Trust?
18		A From the records that we have
19		got, my understanding is that all
20		of the assets that were held by
21		individuals for the 1982 Trust
22		eventually ended up in the 1982
23		Trust, and those assets were then
24		transferred in full to the 1985
25		Trust.
26		That is your information today; correct?
27	A	It is.

1	Q	And at page 63 of the transcript of your
2		evidence and this is when you were being
3		questioned by Ms. Hutchison in relation to your
4		affidavits, page 63, lines 15 to 22: (As read)
5		Q So going back, Mr. Bujold, to
6		paragraph 7, 8, 9, and 10 of your
7		September 12th, 2011, affidavit,
8		what I am sort of focusing on
9		there is that if I understand
10		what you are saying, your belief
11		is that and I apologize. I am
12		actually looking at paragraph 22.
13		So you indicate that your belief
14		is that all of the assets from
15		the 1982 Trust were actually
16		transferred over to the 1985
17		Trust?
18		A Yes.
19		That is and continues to be your belief today?
20	Α	It is.
21	Q	At page 103 and 104 actually, I take that back.
22		Let me just ask you: As I understand it, that in
23		relation to the 1985 Trust definition of
24		beneficiaries, if it is not changed, if it
25		continues to be in accordance with that trustee, it
26		will create certain problems for the trustees, as I
27		understand it; is that correct?

2 Q And some of those problems include the fact that it it discriminates against women who married non-First Nation men and discriminates against their children?  A Yes, it does.  Q And do you recall some of the other problems that will be created by that?  A Well, it discriminates, also, against anyone who's enfranchised, although that clause no longer exists in the Indian Act.  Q Yeah.  A It it discriminates against anyone who's illegitimate, and that's all I can think of at the moment.  Q Okay. The if you go to page 127 of your transcript of questioning by Ms. Hutchison, at line 6 to 27, if you just take a quick look at that, as I understand it, that Sawridge First Nation provided the Sawridge trustees with information about the number of applications for membership and this was passed on to the Public Trustee; correct?  A That's correct, yes.  Q And I'm referring to page 147, lines 4 to 13 of your transcript, and just want to confirm that Sawridge First Nation provided to the Sawridge trustees their membership application form, a flow	1	А	That's correct.
non-First Nation men and discriminates against their children? A Yes, it does. Q And do you recall some of the other problems that will be created by that? A Well, it discriminates, also, against anyone who's enfranchised, although that clause no longer exists in the Indian Act.  Q Yeah. A It it discriminates against anyone who's illegitimate, and that's all I can think of at the moment.  Q Okay. The if you go to page 127 of your transcript of questioning by Ms. Hutchison, at line 6 to 27, if you just take a quick look at that, as I understand it, that Sawridge First Nation provided the Sawridge trustees with information about the number of applications for membership and this was passed on to the Public Trustee; correct?  A That's correct, yes.  And I'm referring to page 147, lines 4 to 13 of your transcript, and just want to confirm that Sawridge First Nation provided to the Sawridge	2	Q	And some of those problems include the fact that
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9 A Well, it discriminates, also, against anyone who's 10 enfranchised, although that clause no longer exists 11 in the Indian Act. 12 Q Yeah. 13 A It it discriminates against anyone who's 14 illegitimate, and that's all I can think of at the 15 moment. 16 Q Okay. The if you go to page 127 of your 17 transcript of questioning by Ms. Hutchison, at line 18 6 to 27, if you just take a quick look at that, as 19 I understand it, that Sawridge First Nation 20 provided the Sawridge trustees with information 21 about the number of applications for membership and 22 this was passed on to the Public Trustee; correct? 23 A That's correct, yes. 24 Q And I'm referring to page 147, lines 4 to 13 of 25 your transcript, and just want to confirm that 26 Sawridge First Nation provided to the Sawridge	7	Q	And do you recall some of the other problems that
10 enfranchised, although that clause no longer exists 11 in the Indian Act. 12 Q Yeah. 13 A It it discriminates against anyone who's 14 illegitimate, and that's all I can think of at the 15 moment. 16 Q Okay. The if you go to page 127 of your 17 transcript of questioning by Ms. Hutchison, at line 18 6 to 27, if you just take a quick look at that, as 19 I understand it, that Sawridge First Nation 20 provided the Sawridge trustees with information 21 about the number of applications for membership and 22 this was passed on to the Public Trustee; correct? 23 A That's correct, yes. 24 Q And I'm referring to page 147, lines 4 to 13 of 25 your transcript, and just want to confirm that 26 Sawridge First Nation provided to the Sawridge	8		will be created by that?
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illegitimate, and that's all I can think of at the moment.  Q Okay. The if you go to page 127 of your transcript of questioning by Ms. Hutchison, at line 6 to 27, if you just take a quick look at that, as I understand it, that Sawridge First Nation provided the Sawridge trustees with information about the number of applications for membership and this was passed on to the Public Trustee; correct?  A That's correct, yes.  And I'm referring to page 147, lines 4 to 13 of your transcript, and just want to confirm that Sawridge First Nation provided to the Sawridge	12	Q	Yeah.
moment.  Q Okay. The if you go to page 127 of your transcript of questioning by Ms. Hutchison, at line 6 to 27, if you just take a quick look at that, as I understand it, that Sawridge First Nation provided the Sawridge trustees with information about the number of applications for membership and this was passed on to the Public Trustee; correct?  A That's correct, yes.  And I'm referring to page 147, lines 4 to 13 of your transcript, and just want to confirm that Sawridge First Nation provided to the Sawridge	13	Α	It it discriminates against anyone who's
16 Q Okay. The if you go to page 127 of your 17 transcript of questioning by Ms. Hutchison, at line 18 6 to 27, if you just take a quick look at that, as 19 I understand it, that Sawridge First Nation 20 provided the Sawridge trustees with information 21 about the number of applications for membership and 22 this was passed on to the Public Trustee; correct? 23 A That's correct, yes. 24 Q And I'm referring to page 147, lines 4 to 13 of 25 your transcript, and just want to confirm that 26 Sawridge First Nation provided to the Sawridge	14		illegitimate, and that's all I can think of at the
transcript of questioning by Ms. Hutchison, at line 6 to 27, if you just take a quick look at that, as I understand it, that Sawridge First Nation provided the Sawridge trustees with information about the number of applications for membership and this was passed on to the Public Trustee; correct?  A That's correct, yes.  And I'm referring to page 147, lines 4 to 13 of your transcript, and just want to confirm that Sawridge First Nation provided to the Sawridge	15		moment.
18 6 to 27, if you just take a quick look at that, as 19 I understand it, that Sawridge First Nation 20 provided the Sawridge trustees with information 21 about the number of applications for membership and 22 this was passed on to the Public Trustee; correct? 23 A That's correct, yes. 24 Q And I'm referring to page 147, lines 4 to 13 of 25 your transcript, and just want to confirm that 26 Sawridge First Nation provided to the Sawridge	16	Q	Okay. The if you go to page 127 of your
19 I understand it, that Sawridge First Nation 20 provided the Sawridge trustees with information 21 about the number of applications for membership and 22 this was passed on to the Public Trustee; correct? 23 A That's correct, yes. 24 Q And I'm referring to page 147, lines 4 to 13 of 25 your transcript, and just want to confirm that 26 Sawridge First Nation provided to the Sawridge	17		transcript of questioning by Ms. Hutchison, at line
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about the number of applications for membership and this was passed on to the Public Trustee; correct?  A That's correct, yes.  And I'm referring to page 147, lines 4 to 13 of your transcript, and just want to confirm that Sawridge First Nation provided to the Sawridge	19		I understand it, that Sawridge First Nation
this was passed on to the Public Trustee; correct?  That's correct, yes.  And I'm referring to page 147, lines 4 to 13 of your transcript, and just want to confirm that Sawridge First Nation provided to the Sawridge	20		provided the Sawridge trustees with information
A That's correct, yes.  And I'm referring to page 147, lines 4 to 13 of your transcript, and just want to confirm that  Sawridge First Nation provided to the Sawridge	21		about the number of applications for membership and
Q And I'm referring to page 147, lines 4 to 13 of your transcript, and just want to confirm that Sawridge First Nation provided to the Sawridge	22		this was passed on to the Public Trustee; correct?
your transcript, and just want to confirm that Sawridge First Nation provided to the Sawridge	23	Α	That's correct, yes.
26 Sawridge First Nation provided to the Sawridge	24	Q	And I'm referring to page 147, lines 4 to 13 of
	25		your transcript, and just want to confirm that
27 trustees their membership application form, a flow	26		Sawridge First Nation provided to the Sawridge
	27		trustees their membership application form, a flow

1		chart for the membership application process,
2		Sawridge First Nation membership rules, and all of
3		this information was passed on by the Sawridge
4		trustees to the Public Trustee?
5	Α	That's correct.
6	Q	At page 150 of the transcript, as I understand it,
7		the Sawridge First Nation provided the Sawridge
8		trustees with letters of acceptance and rejection
9		in relation to membership applications, and these
10		were provided by the Sawridge trustees to the
11		Public Trustee?
12	Α	That's correct.
13	Q	And if you go to page 180 of the transcript, you'll
14		see there there's an undertaking listed as
15		undertaking number 49, at the bottom of the page?
16	Α	Yes.
17	Q	It says: (As read)
18		Inquire of Catherine Twinn her
19		recollection of what was discussed
20		at the April 15th, 1985, meeting
21		that the Sawridge Band resolution
22		presented at Exhibit I of
23		Mr. Bujold's September 12, 2011,
24		affidavit dealt with. Specifically,
25		does she recall if there was any
26		discussion or documentation
27		presented in relation to the

1		transfer of assets from the 1982
2		Trust to the 1985 Trust. Also,
3		inquire if Ms. Twinn has any
4		documentation of that particular
5		meeting.
6		And that undertaking was followed through, and
7		you Sawridge trustees requested that
8		Ms. Catherine Twinn advise you of her response, and
9		as I understand it, Ms. Catherine Twinn's response
10		to that was that she had no memory of the meeting
11		and no documents in her possession?
12	Α	That's correct.
13	Q	If I could get you to turn over to page 181 of the
14		transcript of your questioning on your affidavit,
15		beginning at line 13, and I'm just going to read to
16		you some of this evidence: (As read)
17		Q MS. HUTCHISON: Mr. Bujold,
18		just looking at Exhibit A of your
19		August 30th, 2011, affidavit, so
20		that is the 1982 Declaration of
21		Trust, and I am looking at
22		paragraph 10 of that instrument.
23		A Which one?
24		Q Paragraph 10, on page 5.
25		So I just want to be
26		clear in some of the discussions
27		that we have had around the

1		transfer of assets from the
2		from the '82 Trust to the '85
3		Trust. I take it that you have,
4		at this point, made every inquiry
5		that you have been able to to try
6		and locate any documentation that
7		would have been kept pursuant to
8		this paragraph?
9		A Yes.
10		Q You have. Okay. And you have
11		provided us with copies of
12		anything that in any way relates
13		to or you will be by way of
14		undertaking anything that
15		relates to the transfer of the
16		assets in the 1982 Trust to the
17		1985 Trust?
18		A Yes.
19		And that information is accurate today, is it?
20	Α	Yes, it is.
21	Q	Okay. I'm finished with that transcript.
22		Now, the affidavit of
23		Ms. Catherine Twinn sworn September 23rd, 2015, and
24		filed September 30th, 2015, has been served on the
25		Sawridge First Nation in support of the Public
26		Trustee's applications. And have you read this
27		affidavit?

```
Yes, I have.
 1
       Α
            Okay. And -- and I think we've already confirmed
 2
       0
            that this is the same Ms. Catherine Twinn that
 3
            acted for the Sawridge First Nation as one of their
 4
            legal counsel when the Sawridge First Nation
 5
            challenged the constitutionality of the legislation
 6
            formally referred to as Bill C-31?
 7
            That's correct.
 8
       Α
            And in paragraph 3 of Ms. Twinn's affidavit, she
 9
       Q
            states that the Trust will have a collective asset
10
            value of approximately 213 million by 2015.
11
            was that the value in 2015?
12
            Not that I know of. I have no idea where she got
13
       Α
            that number.
14
            What was the value in 2015?
15
       Q
            I'd have to get that information for you, but it
16
       Α
            was closer to 120 million, combined.
17
            A hundred and...
18
       Q
            Hundred and twenty.
19
       Α
            Million, combined. Yeah.
20
       Q
            And that's not accurate. I'd -- I'd need to -- if
21
       Α
            you want accurate figures, I'd need to get that.
22
                   Perhaps if you don't mind, you could
23
            Yeah.
       Q
            undertake to --
24
25
            I can get that.
       Α
            -- tell us what the value is --
26
       Q
27
       Α
            Yes.
```

```
1
       Q
            -- in --
            Do you want it -- do you want the values as of
 2
            2015?
 3
            And the value today too.
 4
       Q
 5
       Α
            okay.
                                 So December 31st, 2015, and
 6
       MR. HEIDECKER:
            today?
 7
                                 Is that a hard task --
 8
            MR. MOLSTAD:
       Q
 9
       Α
            No. No.
            -- or is that -- no? Okay.
10
                                  Just for clarification.
11
       MR. HEIDECKER:
12
       MR. MOLSTAD:
                                 Yeah.
                                         Yeah.
                   UNDERTAKING NO. 1:
13
                   Advise what the value of the Trust was in
14
                   2015, as well as the value of the Trust
15
16
                   today.
                                 In paragraph 5 of Ms. Twinn's
17
       Q
            MR. MOLSTAD:
            affidavit, she refers to family groups as being
18
            part of the First Nation. Obviously Sawridge First
19
            Nation is a relatively small First Nation. Do you
20
            know -- well, first of all, does Sawridge First
21
            Nation provide you information about who are
22
            members of their First Nation in order to
23
            administrate the Trust?
24
25
            Yes, they do.
       Α
            Yeah. And do you know how many members of the
26
       Q
            Sawridge First Nation today are minors?
27
```

1	Α	One.
2	Q	And paragraph 6 of this affidavit sets out that
3		that the trustees have taken the position that
4		membership in the Band is definitive of the
5		beneficiary status. Would it be more accurate to
6		state that the position of the Sawridge trustee is
7		based upon the declaration of the Trust?
8	Α	Yes, it is. Yes.
9	Q	And you, I assume, as trustees, have received
10		advice through experts that the definition of the
11		beneficiaries under the 1985 Trust is
12		discriminatory; is that correct?
13	А	Yes. From multiple sources.
14	Q	Yeah. And would you agree that there is no process
15		that is necessary to determine the 1985
16		beneficiaries if the definition is changed to
17		members?
18	Α	Until we know what the definition is that the Court
19		will approve, there's no way of defining who the
20		the beneficiaries are.
21	Q	Right. But if the Court doesn't change the
22		definition of beneficiaries, you have what it is.
23	Α	Then we'll have to use the provisions of the 1970s
24		Indian Act.
25	Q	Right. In paragraph 9 of Ms. Twinn's affidavit,
26		she speaks about who the current trustees were when
27		she swore this affidavit September 23rd, 2015, but

1		even at that time, as I understand it, Mr. Justin
2		Twin had ceased to be an elected official or
3		councillor on February 20th, 2015; is that correct?
4	Α	That's correct.
5	Q	And Ms. Bertha L'Hirondelle ceased to be an elected
6		elder on February 20th, 2015?
7	Α	That's correct.
8	Q	In paragraph 10 of Ms. Twinn's affidavit, the
9		reference to determine the age of the membership, I
10		assume that you were aware that for many years
11		there was a a process for application for
12		membership that went to a membership committee
13		first?
14	Α	Yes, I am.
15	Q	And after the membership committee, it then went to
16		chief and council?
17	Α	That's right.
18	Q	And after chief and council, if anyone was
19		dissatisfied, they could lodge an appeal to the
20		Sawridge First Nation electors?
21	Α	That's correct.
22	Q	Yeah. And this membership committee, I think, was
23		disbanded last year?
24	Α	Yes, as far as I know.
25	Q	And now it just goes to chief and council?
26	Α	That's right.
27	Q	But Catherine Ms. Catherine Twinn served on this

```
1
            membership committee during all the years that it
            existed?
 2
            That's right.
 3
       Α
            And is it true the trustees, in their role as
 4
       Q
            trustees, do not participate, in any way, in
 5
            applications for membership in the Sawridge First
 6
            Nation?
 7
            Not as trustees, no.
 8
       Α
 9
       Q
            And in relation to paragraph 14 of Ms. Twinn's
            affidavit, she refers to what may be the intent.
10
            Are you able to confirm that the -- Chief Walter P.
11
            Twinn continued in a practice, up until the time of
12
            his death, where he involved elected officials as
13
            trustees?
14
            Yes. There were elected officials on -- as
15
       Α
16
            trustees up to his -- his passing in
            October 1997 --
17
            Right.
18
       Q
            -- and there continued to be after his passing.
19
                    In paragraph 15 of Ms. Twinn's affidavit,
20
       0
            she mentions about Walter Felix Twin and his
21
            resignation. Would it be fair to say that the
22
            trustees expected that to happen because Mr. Walter
23
            Felix Twin was having some health problems?
24
                  He'd had major surgery in -- in November,
25
       Α
            December of the previous year.
26
            And in paragraph 16 of Ms. Twinn's affidavit, where
27
       Q
```

1		she talks about what happened at the next meeting,
2		there was, in fact, at that meeting, discussion
3		about appointment of Justin Twin as a trustee; is
4		that correct?
5	Α	That's correct.
6	Q	And the motions that were actually presented were
7		drafted, in fact, at the meeting that took place;
8		is that correct?
9	Α	That's correct.
10	Q	And as I understand it, there was some urgency in
11		terms of the appointment of a trustee as a result
12		of a a transaction involving one of the
13		corporations, and this was explained to the
14		trustees?
15	Α	It was. There was also another complication, and
16		that is that we have to have five trustees at all
17		times in order to carry out business.
18	Q	Okay. And and the succession plan that is
19		referred to in paragraph 16 had never been agreed
20		to by the trustees; is that correct?
21	Α	That's correct.
22	Q	And with respect to and prior to the appointment of
23		Justin Twin as one of the trustees, it's my
24		understanding that you obtained information to show
25		that Justin Twin was a beneficiary of the 1985
26		Trust?
27	Α	That's correct.

```
And the --
 1
       Q
                                 Mr. Molstad --
       MS. HUTCHISON:
 2
                                 Yeah?
       MR. MOLSTAD:
 3
                                 -- I know I said I was going
       MS. HUTCHISON:
            to be quiet. I'm just struggling with how this is
 5
            relevant to the 5.13 application, or is there -- is
 6
            there another -- is it the position of the Sawridge
 7
            First Nation that this questioning can be used for
 8
            another purpose?
9
                                 Well, you've put the evidence
       MR. MOLSTAD:
10
            in. You tell me how it's relevant.
11
                                  I'll -- I'll reserve my
       MS. HUTCHISON:
12
13
            objections --
                                  Yeah.
       MR. MOLSTAD:
14
                                  -- for -- for the Court, then.
       MS. HUTCHISON:
15
            Thank you, Mr. Molstad.
16
                                 This is the evidence that
17
       MR. MOLSTAD:
            you've tendered, and we're questioning the witness
18
            about the evidence, and our objective is -- is to
19
            ensure that the evidence before the Court is
20
            factual.
21
                                 And as I understand it, at --
22
            MR. MOLSTAD:
       Q
            at this time, when Justin Twin was appointed, it
23
            necessitated a court application?
24
            That's correct.
25
       Α
            And what was that application in relation to?
26
       Q
            It was to transfer the assets from the old group of
27
       Α
```

trustees to the new group of trustees. 1 And why was it necessary to go to court? 2 0 Because Catherine Twinn refused to sign either the 3 Α appointment -- or the resolution appointing Justin 4 Twin as a trustee or the transfer of assets from 5 the old group of trustees to the new group of 6 trustees. 7 And were the Sawridge trustees successful in 8 Q 9 obtaining an order of the court? The Court ordered that we proceed under my 10 Α direction, as the Trust administrator, without 11 Catherine's consent --12 And --13 Q -- and that the transfer be effected that way. 14 Α And the transfer was effected that way? 15 Q That's right. 16 Α And was that order appealed? 17 Q There was no appeal. 18 Paragraph 18 of Ms. Twinn's affidavit. 19 Q attaches Exhibit A to her affidavit as a document 20 tendered, and I just want to confirm that 21 Exhibit A, although presented, was never approved 22 or adopted by the Sawridge trustees in relation to 23 either the 1985 Trust or the 1986 Trust? 24 It was a brainstorming planning document. Ιt 25 Α was never a policy document. 26 And is it true that there were no written 27 Yeah. Q

1		policies with respect to unanimous approval?
2	Α	There were and are no written policies regarding
3		unanimous approval.
4	Q	And was and that's both in relation to the 1985
5		Trust and the 1986 Trust?
6	Α	That's correct.
7	Q	And is it also true that there was no unwritten
8		policy requiring unanimous approval?
9	Α	Not as far as I know.
10	Q	Yeah. And is it fair to say that the Trust deeds
11		govern the conduct?
12	Α	They always have, and we continue to follow that
13	Q	Yeah.
14	Α	that the Trust deeds are the governing
15		documents.
16	Q	In paragraph 19 of Ms. Twinn's affidavit, you'll
17		see that she refers to raising issues about whether
18		Justin Twin was an eligible beneficiary
19	Α	Can I just go back to 18 for a second?
20	Q	Yeah.
21	Α	In the memo both for the appointment of Justin Twin
22		and and later for the appointment of of Peggy
23		Ward, I I sent the trustees the quotes right out
24		of the Trust deed regarding the process for
25		appointing, that it had to be by a majority
26		decision, that it was and it there was no
27		contesting at the meeting that you know, that

1		the Trust deeds were inaccurate.
2	Q	Okay. Thank you. Paragraph 19 of Ms. Twinn's
3		affidavit. She indicates she raised concerns with
4		the other trustees, and with yourself, whether
5		Justin was an eligible beneficiary under the 1985
6		Trust. And as I understand it, the Sawridge
7		trustees saw it and received a legal opinion on
8		Justin Twin's membership status?
9	Α	That's correct.
10	Q	And that was from Mr. McKinney, in-house legal
11		counsel for Sawridge First Nation?
12	А	That's right.
13	Q	And he concluded that Mr. Justin Twin was a member?
14	Α	That's right.
15	Q	And I also understand that the Sawridge trustees
16		also received that confirmation, either directly
17		from INAC or through the Sawridge First Nation from
18		INAC, confirming in writing that Justin Twin was a
19		member of Sawridge First Nation?
20	Α	Yes, that's right.
21	Q	And I just want to confirm that Sawridge First
22		Nation to your knowledge, chief and council did
23		not conduct a vote with respect to whether Justin
24		Twin was a member of Sawridge First Nation?
25	Α	No, they didn't.
26	Q	And do you have knowledge of any person having been
27		removed as a member of the Sawridge First Nation

```
once they have achieved membership?
1
            I've never heard of it.
 2
       Α
            Paragraph 20 of Ms. Twinn's affidavit. You know,
 3
       Q
            first of all, the Sawridge trustees relied on the
 4
            legal counsel for the Sawridge First Nation and
 5
            INAC regarding Justin Twin's membership status;
6
            correct?
7
            That's correct.
8
       Α
            And the 1985 Trust and the 1986 Trust did not
9
       Q
            retain Mr. Gilbert to do an opinion?
10
            No, they did not.
11
       Α
            No. And if you look at Mr. Gilbert's opinion,
12
       0
            which is attached as Exhibit B to Ms. Twinn's
13
            affidavit, there are just a couple points I want to
14
            take you to there. On page 4 of Mr. Gilbert's
15
            opinion, the last three lines, Mr. Gilbert
16
            states -- and I'll read the last full paragraph
17
                    He says: (As read)
            there.
18
                 These questions arise because
19
                 recently Justin McCoy Twin was made
20
                 a beneficiary and appointed as a
21
                 trustee of that Trust by chief and
22
                 council of the Sawridge Indian Band.
23
            well, first of all, that's not true, is it?
24
            No. Trustees can only be appointed by trustees.
25
      Α
            Right. And, also, if you go over to page 6 of this
26
       Q
            document -- oh, sorry, I guess it's page 5 -- the
27
```

1		bottom of page 5. They quote paragraph 6. Is that
2		paragraph 6 of the '82 1982 Trust?
3	Α	No. 1982.
4	Q	I that's what it's referred to.
5	Α	Oh, okay.
6	Q	And what he says in terms of dealing with intention
7		is an interesting comment because he says that
8		on page 6, in the first full paragraph there: (As
9		read)
10		By virtue of paragraph 6 of the
11		Declaration of Trust, Sawridge Band
12		Trust dated April 15th, 1982, I
13		believe it was the intention of the
14		settler of the 1985 Trust to exclude
15		illegitimate children from being
16		beneficiaries of the Trust.
17		And if you look up above there, you see that the
18		trustees: (As read)
19		Shall be specifically entitled not
20		to grant any benefit during the
21		duration of the Trust or at the end
22		thereof to any illegitimate children
23		of Indian women, even though that
24		child or those children may be
25		registered under the Indian Act, and
26		their status may not have been
27		protested under section 12(2)

```
thereunder.
 1
            I put it to you that that does not mean that they
 2
            are not -- or that they are excluding illegitimate
 3
            children. It gives a discretion.
 4
            Yes. This -- this paragraph is included in both
 5
       Α
            the 1982 Trust --
 6
            And --
 7
       Q
            -- the documents, and the 1985 Trust documents.
 8
       Α
            Okay.
 9
       Q
            And -- and it doesn't -- it doesn't insist that
10
       Α
            they exclude. It just says that they can if they
11
            want.
12
            Right. And in terms of the make-up of the trustees
13
       Q
            of the 1985 Trust and the 1986 Trust, as a result
14
            of the appointment of Margaret Ward as a trustee,
15
            it doesn't matter if Justin Twin is a beneficiary
16
            or not, does it?
17
            No, it doesn't.
18
            Now, paragraph 22 of Ms. Twinn's affidavit.
19
       Q
            I understand that you -- you and -- were not aware
20
            that Clara Midbo was terminally ill and, to your
21
            knowledge, the other trustees were not aware of
22
            this?
23
24
            No. She was very ill, but we didn't --
       Α
25
            Yeah.
       0
            -- we didn't realize it was terminal.
26
       Α
            She was at the June 2014 trustees meeting?
27
       Q
```

1 Α That's right. And she passed away the following month? 2 Q That's right. 3 Α Yeah. And in paragraph 24, Ms. Twinn states that Q 4 5 she emailed you, sir, and the other trustees asking who was being proposed, and she did not receive a 6 response. And I understand that you did phone her 7 and told her what the plan was? 8 Yeah. I -- she didn't receive a response to the 9 Α email, but I did speak to her on the phone, where 10 she inquired who was being proposed, and I told her 11 then that there was no proposals. It would be 12 discussed at the trustee meeting, like it had been 13 at the last -- in the last case. 14 So it was to be discussed at the next 15 Q 16 trustee meeting? That's right. 17 Α Okay. And you communicated that to Ms. Twinn? 18 0 Yes, I did, verbally. 19 If you go to paragraph 25 of the affidavit of 20 0 Ms. Twinn, there was discussion at this trustee 21 meeting about -- and Ms. Twinn proposed that an 22 independent outside trustee be appointed; correct? 23 24 That's right. Α And Chief Roland Twinn basically responded that, in 25 Q his view, the beneficiaries would not be open to 26 outsiders as trustees; is that correct? 27

```
That's correct.
 1
       Α
 2
            And at this meeting, the trustees offered to
       Q
            consider Ms. Catherine Twinn's proposal for an
 3
            independent board in October; correct?
 4
            That's correct.
 5
       Α
            And they asked Ms. Catherine Twinn to proceed with
 6
       0
            the appointment of a trustee to replace Clara
 7
            Midbo, and I understand that Ms. Twinn refused to
 8
            do so?
 9
            That's right.
10
       Α
11
            And I understand that Ms. Twinn also, again,
       Q
12
            refused to sign the transfer of assets?
            Yes, she did.
13
       Α
            And this, again, required an application to the
14
       Q
15
            Court to deal with the transfer of assets?
16
            It did.
       Α
            And that application proceeded and what was the
17
       Q
            result?
18
            The result was that the Court ordered Catherine to
19
20
            sign the transfer documents and the appointment of
            the trustee.
21
            And was that then -- did that result in the
22
       Q
23
            transfer being signed?
            It did.
24
25
            Was that order appealed?
       Q
26
       Α
            No.
            Paragraph 26 of Ms. Twinn's affidavit, she talks
27
       Q
```

1		about the Sawridge group of companies and outside
2		management. Can you respond to that? The the
3		trustees were the shareholders and directors of the
4		companies; is that correct?
5	А	That's right.
6	Q	And Mr. Mike McKinney was a director of the
7	•	companies?
8	А	He was at the time, yes.
9	Q	And the Band council had no control over the
10		companies?
11	Α	No, they did not.
12	Q	And I believe that Mr. McKinney continues as an
13		executive director and general counsel to these
14		companies?
15	Α	To yes, he does.
16	Q	Paragraph 27, the I think we dealt with this.
17		Bottom line is that the trustees the majority of
18		the trustees Sawridge trustees did not agree to
19		delay the appointment of Justin Twin and Margaret
20		Ward; is that correct?
21	Α	No, they did not.
22	Q	And paragraph 28, with respect to Margaret Ward,
23		who is referred to as Peggy Ward in Ms. Twinn's
24		affidavit, as I understand it, the Sawridge
25		trustees had established a process way back in
26		in 2004 to try to develop candidates who might be
27		able to serve as trustees; is that correct?

1	А	That's correct. From 2004 to 2007.
2	Q	Yeah. And the four candidates that were considered
3		at that time as potential trustees were Justin
4		Twin, David Midbo, Deanna Morton, and Margaret
5		ward?
6	Α	That's correct.
7	Q	And and I understand that Catherine or
8		Ms. Catherine Twinn advised you about Margaret Ward
9		and about how she had done research on indigenous
10		education and written a paper, and that she had a
11		PhD; is that correct?
12	Α	That's correct. I that paper was written
13		specifically at the direction of the trustees
14	Q	Oh.
15	Α	and at the request of the trustees by Margaret,
16		and Catherine Twinn also told me that Margaret Ward
17		had been a trustee in training.
18	Q	Okay. So the the Sawridge trustees were aware
19		of Margaret Ward's background, and in addition
20		to the fact that she was a beneficiary of both the
21		1985 and 1986 Trust?
22	Α	Absolutely.
23	Q	Yeah. Paragraph 29 of Ms. Catherine Twinn's
24		affidavit. Previously and historically,
25		Ms. Catherine Twinn had agreed with appointment of
26		Bertha L'Hirondelle, when she was chief, and Walter
27		Twin, a councillor, and Roland Twinn, a councillor?

1	А	That's correct.
2	Q	And in terms of the time that Ms. Catherine Twinn
3		was on the membership committee, I think it was
4		from actually, I may have misspoke. It was from
5		1985 to March 31st, 2016. Is that your
6		information?
7	Α	Yes, as far as I understand.
8	Q	Yeah. I I believe it was March 31st of '16 that
9		the membership committee ceased and applications
10		for membership went to chief and council after
11		that.
12	Α	Okay.
13	Q	Now, in paragraph 29 of Catherine Twinn's
14		affidavit, she does refer to political and personal
15		agendas. The fact of the matter is that there has
16		been, to this date, no distribution from the 1985
17		Trust; correct?
18	Α	That's correct.
19	Q	In paragraph 29, in the first part of this
20		paragraph, Ms. Catherine Twinn states that when her
21		concerns are expressed to the other trustees, the
22		Chair, and Mr. Bujold, she is either ignored or met
23		with varying degrees of ridicule, denial, reprisal,
24		and/or contempt. Would you comment and respond to
25		that allegation?
26	Α	I I don't think that any of the trustees or the
27		chair or myself ignore Catherine, ever, in a

1	meeting. She makes it very difficult to be
2	ignored, and we don't certainly don't engage in
3	ridicule, denial, reprisal, or contempt. We
4	certainly may disagree with her ideas, but we try,
5	as much as possible, not to engage in personal
6	attacks.
7	Q Okay. In paragraph 29(a) of this affidavit,
8	mention is made of Chief Roland Twinn's children
9	were quickly added to the Band membership list.
10	It's my understanding that Chief Twinn's children's
11	applications were dealt with, in one case, over a
12	period of time of 557 days and, in another case,
13	266 days, and when they were dealt with, Chief
14	Roland Twinn abstained. Is that consistent with
15	what you know?
16	A Yes, it is.
17	Q And I think we've confirmed that the Sawridge
18	trustees have no role in determination of
19	membership when they are acting as trustees?
20	A None.
21	MR. MOLSTAD: Why don't we take why don't
22	we take 15 minutes? Okay?
23	MS. BONORA: Yeah. Thank you.
24	(ADJOURNMENT)
25	Q MR. MOLSTAD: If I could continue now the
26	affidavit of Ms. Catherine Twinn in paragraph
27	29(b). In terms of these remarks about Alfred

```
1
            Potskin, it's my understanding that Mr. Alfred
            Potskin was enfranchised May 28th, 1952?
 2
            Yes, as far as I know,
 3
       Α
            Okay. And although she makes reference to the
 4
       0
            membership committee, I -- I believe the fact is
 5
            that it is chief and council that an application
 6
 7
            goes to now; correct?
            That's correct.
 8
       Α
            And --
 9
       0
            Even the membership committee simply recommended to
10
       Α
            council -- chief and council. It never actually --
11
            Never --
12
       Q
13
            -- made a decision.
       Α
            -- never decided.
                               Right.
14
       Q
                                 And in terms of the 17
15
            children that have been admitted into membership,
16
            are you aware that six of those never had a parent
17
            on council?
18
19
       Α
            Yes.
            Okay. 29(c). Do you have any knowledge about what
20
       0
            Ms. Catherine Twinn is speaking of in making this
21
22
            allegation?
            I think that she is referring to the case of
23
            Elizabeth Poytras, but we -- well, in our
24
            examination of Elizabeth, there were problems with
25
            her filling out the application. It was never
26
27
            completed.
```

1	Q	But the fact is that Elizabeth Poytras was that
2		one of those person who was declared to be a member
3		by the
4	Α	She was declared in yeah, by Justice Hugessen.
5	Q	Right. Paragraph 29(d) of Ms. Catherine Twinn's
6		affidavit, as I understand it, in response to this,
7		the Sawridge trustees very specifically sought the
8		direction of the Court to determine what it should
9		do; is that correct?
10	Α	That's correct.
11	Q	And the trustees never made decisions to restrict
12		Sawridge First Nation membership; correct?
13	А	No. No, they haven't.
14	Q	Yeah. And at the at the at the present time,
15		there's only one elected official who's the
16		trustee; correct?
17	Α	That's correct.
18	Q	And is it fair to say that it is, in fact, useful
19		to the board of trustees that you've observed them
20		when they do have an elected official an elected
21		official to come report on the needs of the nation?
22	Α	Yes, it's been very useful.
23	Q	Referring to paragraph 29(e) of
24		Ms. Catherine Twinn's affidavit, since the matter
25		has been referred to the Court, the statement that
26		"we don't know who they are" may be, in fact,
27		correct. Is that fair?

1	А	Yes, that is, in fact, correct. Until the Court
2		advises us who or what the definition will be
3	Q	Right.
4	А	we have no way of choosing.
5	Q	I think you mentioned that as far as you know, the
6		intention, once the impact of Bill C-31 was
7		determined, would be to ensure that all members
8		were beneficiaries of the Trust?
9	Α	well, the 1982 Trust were for the Band members.
10		1985 Trust, I think, had the same intent. It just
11		wanted to restrict anyone who could claim
12		membership
13	Q	Yeah.
14	Α	through Bill C-31.
15	Q	Okay. Paragraph 29(f) of Ms. Catherine Twinn's
16		affidavit. The would you agree that the that
17		how membership of in Sawridge First Nation is
18		determined is the responsibility of the Sawridge
19		First Nation?
20	Α	We had a very clear legal opinion provided us to
21		the trustees on that on that very point, and it
22		was very clear that the trustees had no business
23		interfering in any way with the determination of
24		membership.
25	Q	Okay. And do you also understand that the Sawridge
26		First Nation membership code was drafted to
27		effectively give Sawridge First Nation control over

1		membership and that it wanted that complete
2		control?
3	А	Yes.
4	Q	29(g) of Ms. Catherine Twinn's affidavit. And this
5		issue that she raises having been discussed, it's
6		my understanding that the Sawridge trustees have
7		discussed it, and the majority of the Sawridge
8		trustees have decided that Band membership is the
9		jurisdiction of the Sawridge First Nation?
10	Α	That's correct.
11	Q	And is it also correct that the Sawridge trustees
12		did, in fact, obtain a legal opinion provided by
13		Donovan Waters that the trustees had no business
14		interfering in the membership process?
15	А	That's correct.
16	Q	Exhibit or Catherine Twinn's affidavit or
17		Ms. Catherine Twinn's affidavit at paragraph 29(h).
18		And I just want to confirm that in that there has
19		been no distribution from the 1985 Trust, one of
20		the purposes of your your application, your
21		questions that are being put to the Court, is to
22		allow you to provide benefits from the 1985 Trust
23		to the beneficiaries?
24	Α	That's correct.
25	Q	Paragraph 29(i) of Ms. Catherine Twinn's affidavit.
26		Do you have any information that Sawridge Resource
27		Developments [sic] does not operate in accordance

1		with the laws and good governance?
2	А	Not that I know of.
3	Q	29(j) of Ms. Catherine Twinn's affidavit. Have you
4		ever received any information or seen anything that
5		suggests that Chief Roland Twinn has threatened to
6		take Catherine Twinn's home away?
7	А	Certainly not at a trustee meeting. I've never
8		seen it there.
9	Q	Yeah. And have you spoken to Chief Roland Twinn
10		about these allegations in 29(j) of Ms. Catherine
11		Twinn's affidavit?
12	А	He's he's had conversations with me about
13		about this allegation, but he's indicated he
14		never
15	Q	Yeah.
16	Α	never said that.
17	Q	Did he deny this allegation?
18	Α	Yes, he did.
19	Q	Yeah. It it says in paragraph 29(j) of
20		Ms. Catherine Twinn's affidavit that she's afraid
21		that if she speak out at trustee meetings, she'll
22		be faced with reprisal from her because of Chief
23		Roland Twinn.
24		When you are in attendance at
25		the Sawridge trustees meetings, does Ms. Catherine
26		Twinn's behaviour ever demonstrate that she's
27		afraid to speak out?

1	А	Quite the contrary. She'll speak out on anything,
2		any time, and will often oppose Chief Roland
3		Twinn's proposals and will oppose motions that he
4		votes on.
5	Q	Yeah. 29 at paragraph 29(k) of Ms. Catherine
6		Twinn's affidavit
7	А	M-hm.
8	Q	it refers to legal fees, and it's my
9		understanding that the Sawridge trustees, including
10		Ms. Catherine Twinn, agreed to pay the legal fees
11		of the Sawridge First Nation when it became clear
12		that considerable work would have to be done by the
13		Sawridge First Nation for the Trust to complete
14		their their application in relation to the
15		transfer of the assets in the definition of
16		beneficiaries; is that correct?
17	А	That's correct. I would have to get an
18		undertaking or do an undertaking with you to
19		provide the exact motion to ensure that Catherine
20		actually voted in favour. It was discussed on a
21		couple of occasions, and I think in the first
22		occasion, yes, she was in favour. I think in the
23		second occasion, she may have objected.
24	Q	Right. Well, the the the majority of the
25		trustees
26	Α	But the majority of the trustees certainly
27	Q	were in favour?

-- were in favour, yes. 1 Α And in --2 0 Yeah. Mr. Molstad, do you want that MS. BONORA: 3 undertaking? You don't want -- you're satisfied 4 5 with that answer? Yeah, I am. Yeah. MR. MOLSTAD: 6 Paragraph 29(1) of 7 MR. MOLSTAD: Q Ms. Catherine Twinn's affidavit. 8 9 M-hm. Yes. Α This concern expressed about Mr. Poretti, it's my 10 Q understanding that although Mr. Poretti was one of 11 the counsel in relation to the Bill C-31 12 constitutional challenge advanced by the Sawridge 13 First Nation, the issue of conflicts of interest 14 were examined when he was first involved in the 15 Trust application, and no conflict was identified 16 by the Sawridge trustees at that time; is that 17 correct? 18 That's correct, and he also indicated very clearly 19 Α that he wouldn't share any information from that 20 21 previous action. Paragraph 29(m) of Ms. Catherine Twinn's 22 Q affidavit. I understand that you conducted, or 23 someone on your behalf conducted, an investigation 24 to determine what, if any, records in the Sawridge 25 First Nation storage building in Slave Lake were 26

27

destroyed, and it was determined that these records

1		were bar chits from the liquor services at the
2		Sawridge Inn Slave Lake from the early days, late
3		1970s, and that they had no relevance since the
4		financial information was contained in the company,
5		financial statements obtained by the Trust. Is
6		that is that true?
7	Α	That's correct, and I undertook that investigation
8		myself.
9	Q	Okay. Paragraph 29(n) of Ms. Catherine Twinn's
10		affidavit. When she refers to this proposal, it's
11		my understanding that the proposal for a community
12		centre was to see if there were other ways that the
13		Trust could benefit the beneficiaries, and it was,
14		in fact, recognized that the Trust funds could not
15		be paid to the First Nation, and one of the
16		proposals that was put forward was that the company
17		pay licencing fees to the Sawridge First Nation of
18		50,000 over ten years for the use of the Sawridge
19		name and that that money, in turn, could be used by
20		the Sawridge First Nation to assist in a
21		building a new office building on the Reserve,
22		but the agreement was never concluded or
23		<pre>implemented; is that correct?</pre>
24	Α	That's correct.
25	Q	And the fact is that 19 of the 44 beneficiaries of
26		the Sawridge Trust live away from the Reserve,
27		while 25 of 44 and their families live on the

Reserve or close by? 1 That's correct. 2 Α And that's the beneficiaries of the 1986 Trust? 3 Q That's right. 4 Α 5 0 Paragraph 30 of Ms. Catherine Twinn's affidavit refers to the code of conduct, which is Exhibit E 6 7 to her affidavit. Yes. 8 Α 9 Q If I could just turn -- or have you turn to that document. 10 Did Ms. Catherine Twinn draft 11 this code of conduct? 12 13 She played a large part in drafting it, yes. Α Yeah. And the trustees, including Ms. Catherine 14 Q Twinn, signed this code of conduct, Exhibit E? 15 Yes, she did. 16 Α 17 Q And in paragraph 6 of this code of conduct, it deals with confidentiality --18 19 Yes. Α -- and an obligation of the trustees to maintain a 20 Q 21 confidentiality of the deliberations and other confidential information. Was an application made 22 on behalf of Ms. Catherine Twinn to seal this 23 affidavit? 24 Yes, it was. Well, it -- she never actually made 25 Α the application. She requested it at -- at a 26 hearing in front of Justice Thomas, and he said he 27

```
wouldn't -- that there had to be a whole process
 1
            that they had to go through.
 2
            Right. They would have had to serve notice on --
 3
       Q
            On the media.
       Α
 4
            -- the media?
 5
       Q
 6
       Α
            Yeah.
 7
       Q
            And do you know if that happened?
 8
       Α
            No, it didn't.
            So there's been no application to seal this
 9
       Q
            affidavit?
10
            No.
11
       Α
            If you go to Schedule A of the code of conduct
12
       Q
            that's been signed by the Sawridge trustees, it
13
            describes the responsibilities of the trustees, and
14
            under the title "Beneficiaries" -- and describes
15
            who they are. So the trustees, when they sign this
16
            code of conduct, undoubtedly, would have seen
17
            and -- the definition of the beneficiaries, as it's
18
            described in this document?
19
20
       Α
            Yes.
21
            And is this an accurate description of the
       Q
            beneficiaries?
22
23
            Yes, it is.
            And just for the record, the definition of
24
       Q
            beneficiaries in Schedule A of the code of conduct
25
            are described as follows: (As read)
26
                 Paragraph 2(a) of the Trust deed
27
```

1		applying to the 1985 Trust defines
2		beneficiaries for the purposes of
3		that trust as: All persons who at
4		any particular time qualify as
5		members of the Sawridge Indian Band,
6		pursuant to the provisions of the
7		Indian Act, as those provisions
8		existed on April 15th, 1982.
9		Paragraph 2(a) of the Trust
10		deed applying to the 1986 Trust
11		defines beneficiaries for the
12		purposes of that Trust as: All
13		persons who at any particular time
14		qualify as members of the Sawridge
15		Indian Band under the laws of Canada
16		in force from time to time,
17		including the membership rules and
18		customary laws with the Sawridge
19		Indian Band, as they exist from time
20		to time, to the extent that such
21		membership, rules, and customary
22		laws are incorporated into or
23		recognized by the laws of Canada.
24		And that summary is a a reasonably accurate
25		summary of the beneficiaries?
26	Α	It is.
27	Q	Okay. Paragraph 33 of the affidavit of

```
Ms. Catherine Twinn. This deals with an allegation
 1
            of -- of conflict, which we'll deal with later in
 2
            terms of the direction of the Court, but would you
 3
            agree that, to date, there has been no conflict in
 4
            terms of a conflict of interest when the Sawridge
 5
            trustees are addressing issues that they have to
 6
            address?
 7
            Other than Catherine Twinn's general allegations,
 8
       Α
 9
            there have never been any specific --
            Yeah.
10
       Q
            -- allegations of conflict of interest.
11
       Α
            And although Ms. Twinn has suggested independent
12
       Q
            trustees, that, in fact, would require an amendment
13
            to the Trust, which would require 80 percent of the
14
            beneficiaries to agree to that; is that correct?
15
            That's correct.
16
       Α
            And that may be rather difficult in terms of the
17
       Q
            1985 Trust, when you don't know who all the
18
            beneficiaries are?
19
            That's correct.
20
       Α
21
       Q
            And is it fair to say that the Sawridge trustees --
            or the majority of the Sawridge trustees believe
22
            that the beneficiaries do not want the Trust run by
23
            outside trustees that are not part of the
24
25
            community?
            That's correct.
26
            Yeah. And in terms of your observation, have you
27
       Q
```

1		observed that the trustees, four of them are not
2		elected to chief or council, are, in any way,
3		reluctant to take positions that when they
4		attend at meetings?
5	А	No. They're they're all very eager to
6		participate fully in the the affairs of the
7		Trust.
8	Q	Right. Paragraph 34 of Ms. Catherine Twinn's
9		affidavit. Would you you know, I I believe
10		it's alleged that Chief Roland Twinn is a primary
11		influence of the trustee decisions. Would you
12		agree that the decisions are made after discussion
13		and appear to be independent decisions of each
14		trustee?
15	А	They are. I I would disagree that Chief Roland
16		Twinn is the primary motivator of of ideas that
17		come before the Trust. I think Catherine Twinn
18		is would be the one that brings most of the
19		ideas.
20	Q	In paragraph 34 of Ms. Catherine Twinn's affidavit,
21		she indicates that she finds it hard as a
22		non-elected trustee to cast a vote against the
23		chief and other elected Band officials who are
24		trustees for fear of political, legal, financial,
25		and other repercussions. What is your observation
26		in relation to that statement?
27	А	As I stated before, I Catherine Twinn never

1		is never reluctant to express her opinion on
2		anything and is certainly not afraid to cast an
3		opposing vote or to abstain and to explain why she
4		is opposing or abstaining. I I've never seen
5		any reluctance at all in Catherine's participation.
6	Q	And in past, is it correct to state that
7		Ms. Catherine Twinn has voted against positions of
8	•	the elected officials?
9	Α	On a number of occasions, yes.
10	Q	Yeah. And now, the Sawridge First Nation is a
11		small First Nation relative to other First Nations
12		in Canada?
13	Α	That's correct.
14	Q	And if you removed elected officials from the
15		ability to serve as Sawridge trustees, would you
16		lose a number of eligible candidates?
17	Α	If you were to remove the 5 people who are elected
18		out of 44, that would make a significant reduction
19		in qualified candidates as trustees, yes.
20	Q	Yeah. And, generally, when the trustees make
21		decisions, those decisions are voted on after there
22		has been discussion of the issues?
23	А	Considerable discussion, yes, and research, often.
24	Q	Yeah. In paragraph 35 of Ms. Catherine Twinn's
25		affidavit, she makes mention of some First Nations
26		who structure their trust different from the
27		Sawridge First Nation. Would you agree that there

1		are a number of trusts that have been established
2		by First Nations who or that involve their
3		elected officials as trustees?
4	А	Yes. The there's there's over 600 First
5		Nations in Canada, and of these, a number of these
6		would probably have trusts and a number of those
7		trusts are have Band officials and elected
8		members as as trustees.
9	Q	Yeah. Okay.
10	MS.	HUTCHISON: Are you done with that
11		affidavit, Mr. Molstad?
12	MR.	MOLSTAD: Yes, I think I'm done with
13		that affidavit for now.
14	MS.	HUTCHISON: I just would like to note on
15		the record, we were on that affidavit, by my count,
16		for over an hour.
17		Our letter of June 7th, 2016,
18		made note that we would make limited use of this
19		affidavit and maybe only refer to paragraph 29, and
20		that was 18 minutes of the questioning on
21		paragraph 29. We will be taking the position that
22		the vast majority of the questions on this
23		affidavit were completely irrelevant to the 5.13
24		application. Thank you, Mr. Molstad.
25	MR.	MOLSTAD: The the evidence that you
26		have adduced in support of your application is the
27		whole of the affidavit.

1	MS.	HUTCHISON:	I I would just refer you to
2		the letter you've en	ntered as an exhibit.
3	MR.	MOLSTAD:	I read your letter, and
4	MS.	HUTCHISON:	Yeah.
5	MR.	MOLSTAD:	and your letter didn't say
6		that you would be re	elying on only that paragraph.
7		You said you would k	oe relying mainly on that
8		paragraph, and unti	l you tell me precisely what you
9		are relying upon, I	will continue to ask questions
10		in terms of the cor	rectness of the evidence that
11		you're putting forwa	ard.
12	MS.	HUTCHISON:	The questions, Mr. Molstad,
13		must remain relevant	t to the application that is
14		before the Court, wh	nich is a 5.13 application on
15		membership production	on.
16	MR.	MOLSTAD:	Well, right now we have two
17		applications before	the Court. I understand what
18		you've told me in to	erms of the application in terms
19		of the transfer of a	assets, but that application has
20		not yet been resolve	ed, dismissed, and is before the
21		Court, so	
22			I understand what your
23		position is, and, yo	ou know, if we want to put our
24		positions on the red	cord, let me put mine on on
25		behalf of the Sawrio	dge First Nation, that these
26		applications pursuar	nt to 5.13 are duplicitous.
27		They are completely	devoid of merit. They are a

*	
1	waste of resources in terms of the Sawridge First
2	Nation, and we, on behalf of the Sawridge First
3	Nation, will be seeking solicitor-client costs
4	against the Public Trustee in relation to these
5	applications on the basis that the Public Trustee
6	is not indemnified from the Sawridge Trust. So
7	MS. HUTCHISON: Thank you, Mr. Molstad. And
8	I I assume that in those submissions, you'll
9	provide the Court with evidence about which of your
10	accounts were paid by the Sawridge Trust?
11	MR. MOLSTAD: No, we won't. I'll just take
12	a moment here.
13	Q MR. MOLSTAD: I'm showing you now an order
14	that's been signed by all of the counsel on these
15	proceedings that flow from the decision of
16	Mr. Justice Thomas, which, unfortunately, has
17	yet not yet been signed by the Court. So I'm
18	going to ask that this be marked this as an
19	exhibit. You've seen this, I assume, sir?
20	A Yes, I have. Yes.
21	MR. MOLSTAD: I'd ask that it be marked as
22	an exhibit.
23	EXHIBIT 7:
24	Order of Mr. Justice Thomas, signed by
25	all counsel in the proceedings
26	Q MR. MOLSTAD: The Exhibit 7, which is the
27	order of the Court. Do you have that in front of

1		you, sir?
2	Α	I do.
3	Q	Appreciating that it has not yet been signed by the
4		Court but it has been approved by all counsel,
5		the I I want to take to you some of the
6		provisions of this and just ultimately ask you a
7		few questions.
8		In paragraph 5 of or,
9		sorry, paragraph 3 of this order, it was ordered by
10		the Court that: (As read)
11		The Public Trustee shall not conduct
12		an open-ended inquiry into the
13		membership of the Sawridge First
14		Nation and the historic disputes
15		that relate to that subject.
16		And in paragraph 4, it states that: (As read)
17		The Public Trustee shall not conduct
18		a general inquiry into potential
19		conflicts of interest between
20		Sawridge First Nation, its
21		administration, and the Sawridge
22		trustees.
23		And over on the next page, it states that: (As
24		read)
25		The Sawridge First Nation shall
26		provide the following to the Public
27		Trustee by January 29th, 2016:

1	(a) The names of individuals who
2	have:
3	(i) Made
4	applications to join the Sawridge
5	First Nation which are pending; and
6	(ii) Had the
7	applications to join the Sawridge
8	First Nation rejected and are
9	subject to challenge.
10	(b) The contact information for
11	those individuals were available.
12	And in paragraph 13 it states: (As read)
13	The Public Trustee is instructed
14	that if it requires any additional
15	documents from the Sawridge First
16	Nation to assist it in identifying
17	the current and possible members of
18	category 2, minors who are children
19	of members of the Sawridge First
20	Nation, the Public Trustee shall
21	file a Rule 5.13(1) application by
22	January 29th, 2016.
23	Now, I think we've already marked as an exhibit the
24	letter that was sent to the Public Trustee
25	responding to the direction to the Sawridge First
26	Nation, which was sent out, I believe, on on
27	January 18th and has been marked as Exhibit 4 in

1		these proceedings.
2		After that letter was sent,
3		did the Public Trustee, through their counsel,
4		request any additional information from the
5		Sawridge trustees in relation to membership?
6	Α	No.
7	Q	And paragraph 15 also states that: (As read)
8		The Public Trustee shall not engage
9		in collateral attacks on membership
10		processes of the Sawridge First
11		Nation, and the Sawridge trustees
12		shall not engage in collateral
13		attacks on Sawridge First Nation's
14		membership processes.
15		The Sawridge First Nation was not requested by
16		or, sorry. The the Sawridge trustees were not
17		requested by the Public Trustee to provide any
18		information following this letter in January of
19		2016 in relation to the membership process; is that
20		correct?
21	Α	That's correct.
22	Q	Now
23	MR.	MOLSTAD: Off the record.
24	(DIS	SCUSSION OFF THE RECORD)
25	Q	MR. MOLSTAD: The your counsel has
26		provided you with a a copy of their letter to
27		the Public Trustee, which is dated today oh,

```
wait a minute. This is without prejudice.
 1
 2
            No. It's with prejudice.
                                 It -- it's with prejudice.
 3
       MS. BONORA:
            Is -- are you referring --
 4
                                 Oh, sorry. Yeah, it is
       MR. MOLSTAD:
 5
            with --
 6
 7
       MS. BONORA:
                                 -- to the July 27th --
                                 Yeah.
                                         Yeah. Sorry. Sorry.
 8
       MR. MOLSTAD:
                                        This is a copy of what
                                 Yeah.
       Q
            MR. MOLSTAD:
            your counsel sent to the Public Trustee today; is
10
            that correct?
11
            That's correct, yes.
12
                                 Could we mark that as the next
       MR. MOLSTAD:
13
            exhibit, please?
14
                   EXHIBIT 8:
15
                   Copy of letter sent to the Public Trustee
16
                   dated July 27, 2016
17
                                 So Exhibit 8, which is the
18
       Q
            MR. MOLSTAD:
            letter from Mr. Poretti to the -- counsel for the
19
            Public Trustee and to McLennan Ross is the form of
20
            the order that the -- I understand, that the Public
21
            Trustee has advised you today that they are
22
23
            prepared to agree to; is that correct?
            That's correct.
24
       Α
            And we don't know whether Ms. Platten, on --
25
       Q
            counsel on behalf of Catherine Twinn, will agree to
26
            this at this time, do we?
27
```

1 Α No, we do not. Yeah. Those are the questions MR. MOLSTAD: 2 that I have in cross-examination. 3 I have a couple of questions 4 MS. BONORA: I'd like to just put on the record for clarification. 6 PAUL BUJOLD, PREVIOUSLY SWORN. 7 QUESTIONED BY MS. D. C. E. BONORA: 8 MS. BONORA: Mr. Bujold, the -- you were 9 Q asked questions about two different orders with 10 respect to the appointment of Justin Twin and 11 Margaret Ward. You were specifically asked whether 12 the order in respect of the appointment of Margaret 13 ward and the transfer of assets was appealed. 14 you tell me whether the order with respect to the 15 appointment of Justin Twin and the transfer of 16 assets was appealed? 17 No. it was not. 18 In respect of the appointment of Justin Twin, can 19 Q you tell me the order in terms of events, in terms 20 of when Justin Twin was appointed as a trustee and 21 when you received information in respect of his 22 23 membership status? Justin Twin was -- I mean, the -- the vote was 24 Α taken at the January 21st meeting, 2014. 25 signed the documents in February of that year. 26 letters from Mike McKinney and Indian Affairs were 27

received subsequent to that. 1 Can you just advise and put on the record what was 2 Q in the package that was sent to the trustees before 3 Margaret Ward -- before the meeting which Margaret 4 Ward was appointed as trustee? What was included was a notice of meeting, that it 6 Α was a special meeting, the requirements under the Trust deeds on how trustees can be appointed, and, 8 basically, the date and place of the meeting. 9 10 Q And --Oh, and the other thing is that we had -- we had Α 11 designed resolutions to be passed by the trustees 12 with Justin -- with Justin's appointment -- or 13 prior to Justin's appointment. We had designed two 14 resolutions: one for transferring -- or -- or 15 appointing the trustee and transferring the assets 16 and one for limiting the term of -- of appointment. 17 And so those were presented in draft form. 18 I -- I just want to take you back to a letter which 19 Q was not marked as an exhibit for privacy reasons, 20 which is a letter to -- or an email from Dentons to 21 Hutchison Law dated April 5th, 2016. 22 23 Α Yes. And I believe you were asked the question, Was 24 Q there any information requested with respect to 25 paragraph 13 of the order resulting from the 26 December 17th decision? And I believe your answer 27

1	was, No. And I	want you to look at this and advise						
2	whether you thin	k that there was, in fact, any						
3	information requ	ested and then provided to the						
4	Public Trustee's	Public Trustee's office.						
5	A The request was	for the list of minors. We updated						
6	the minors as of	the minors as of as of the date of this email.						
7	No other no f	urther information was requested,						
8	as far as I know							
9	MS. BONORA:	Okay. Those are all my						
10	questions.							
11	MR. MOLSTAD:	Okay. Anything else?						
12	MS. HUTCHISON:	No. Thanks, Ed.						
13	MR. MOLSTAD:	Okay. Thanks very much.						
14	MS. HUTCHISON:	Thank you.						
15	MR. MOLSTAD:	Thank you.						
16								
17	PROCEEDINGS ADJOURNED	12:04 P.M.						
18								
19								
20								
21								
22								
23								
24								
25								
26								
27								

1	CERTIFICATE OF TRANSCRIPT
2	
3	I, the undersigned, hereby certify that the
4	foregoing pages are a complete and accurate
5	transcript of the proceedings taken down by me in
6	shorthand and transcribed from my shorthand notes
7	to the best of my skill and ability.
8	Dated at the City of Edmonton, Province of Alberta,
9	this 2nd day of August, 2016.
10	AMmHanhin
12	
13	Allison Hawkins, CSR(A)
14	Court Reporter
15	
16	
17	
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T	20:6, 21:16, 22:14, 22:25,	<b>I</b> 53:22	49:2, 49:8, 49:10, 65:17
	23:4, 23:18, 24:3, 24:9,	28th [2] - 29:19, 57:2	600 [1] - 71:4
<b>'16</b> [1] - 55:8	25:14, 25:20, 26:7, 26:11,	<b>29</b> [7] - 4:19, 54:23, 55:13,	<b>63</b> [2] - 33:1, 33:4
<b>'82</b> [4] - 21:15, 27:12, 37:2,	26:15, 26:27, 27:8, 27:12,	55:19, 62:5, 71:19, 71:21	6th [1] - 9:22
49:2	27:17, 27:23, 28:3, 28:11,	<b>29(a</b> [1] - 56:7	
<b>'85</b> [4] - 17:17, 17:18, 24:1,	30:25, 30:26, 31:2, 32:6,	<b>29(b)</b> [1] - 56:27	7
37:2	32:24, 33:16, 33:23, 35:20,	<b>29(c)</b> [1] - 57:20	
water .	36:2, 37:17, 40:11, 40:15,	<b>29(d</b> [1] - 58:5	<b>7</b> [4] - 4:22, 33:6, 73:23,
1	43:25, 45:24, 46:4, 47:5,	<b>29(e</b> [1] - 58:23	73:26
1 00 15 111 115	48:9, 49:14, 50:8, 50:14,	<b>29(f</b> [1] - 59:15	<b>73</b> [1] - 4:22
<b>1</b> <sub>[8]</sub> - 3:9, 4:5, 11:1, 11:5,	54:21, 55:5, 55:16, 59:10,	<b>29(g</b> [1] - 60:4	77 [1] - 4:24
11:24, 17:8, 39:13	60:19, 60:22, 67:1, 68:18	<b>29(h)</b> [1] - 60:17	<b>78</b> [1] - 2:6
<b>10</b> [6] - 16:9, 20:11, 33:6,	<b>1986</b> [16] - 9:7, 9:8, 9:13,	<b>29(i</b> [1] - 60:25	7th [4] - 4:11, 13:2, 13:9,
36:22, 36:24, 41:8	17:10, 19:16, 24:7, 28:12,	<b>29(j</b> [3] - 61:3, 61:10, 61:19	71:17
103 [1] - 33:21	30:25, 31:2, 45:24, 46:5,	29(k [1] - 62:5	***************************************
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## TAB G

AUG 1 7 2016 of the

Clerk's stamp:

**COURT FILE NUMBER** 

1103 14112

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

**EDMONTON** 

IN THE MATTER OF THE TRUSTEE ACT, R.S.A. 2000, c. T-8, AS AMENDED

IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN, OF THE SAWRIDGE INDIAN BAND, NO. 19 now known as SAWRIDGE FIRST NATION ON APRIL 15, 1985

**APPLICANTS** 

ROLAND TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE, and CLARA MIDBO,

CATHERINE TWINN, as trustees for the 1985

Sawridge Trust

DOCUMENT

BRIEF OF THE TRUSTEES FOR APPROVAL OF THE TRANSFER OF **ASSETS FROM THE 1982 TRUST TO** THE 1985 TRUST

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Dentons Canada LLP 2900 Manulife Place 10180 - 101 Street Edmonton, AB T5J 3V5

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#### INTRODUCTION

- 1. This Brief is filed in support of an application concerning the Sawridge Band Inter Vivos Settlement dated April 15, 1985 (the "1985 Trust") brought by the trustees of the 1985 Trust (the "Trustees"). The Trustees seek the approval of the Court of the transfer of assets which occurred in 1985, from the Sawridge Band Trust ("1982 Trust") into the 1985 Trust, nunc pro tunc.
- This application is being made with consent. Attached at Tab 1 is a Consent Order provided for approval of the Court. The within material is filed to provide the Court with the factual background to consider the proposed Consent Order.
- This Consent order is not to be deemed to be an accounting of the assets transferred into the 1982 Trust or the 1985 Trust. The Trustees have agreed a beneficiary may seek an accounting in relation to the 1982 Trust or the 1985 Trust.
- OPGT agreed to withdraw its Rule 5.13 Asset transfer application against Sawridge First Nation once the terms of the Order were agreed to on July 27, 2016 (Questioning of Paul Bujold July 27, 2016 page 7-8 compressed transcript Tab 4).

#### PART I - STATEMENT OF FACTS

- 5. The history of the 1982 Trust and the information available related to the transfer of assets into the 1985 Trust is the subject of affidavits sworn by Paul Bujold, Chief Executive Officer of the Sawridge Trusts, and on which affidavits he has been questioned. The factual background obtained from this evidence includes:
  - (a) In 1982, the Sawridge Band ("Band") decided to establish a formal trust in respect of property then held in trust by individuals on behalf of the present and future members of the Sawridge Band. On April 15, 1982, a declaration of trust establishing the 1982 Trust was executed. (Affidavit of Paul Bujold September 12, 2011 paragraph 9 and 10) On April 15, 1985, a Resolution of trustees was made whereby the trustees of the 1982 Trust resolved to transfer the assets of the 1982 Trust to the 1985 Trust. (Affidavit of Paul Bujold September 12, 2011 Paragraph 19, 20 and 21)

- (b) On April 16, 1985, the Trustees of the 1982 Trust and the Trustees of the 1985 Trust declared that the Trustees of the 1985 Trust would hold and continue to hold legal title to the assets which had been held in the 1982 Trust. (Affidavit of Paul Bujold September 12, 2011 paragraph 21)
- Mr. Bujold attests that through his review of all of the documents in the possession of or acquired by the Trustees, and through his discussion with many individuals involved with the trusts, he believes that all of the assets held in the 1982 Trust were transferred to the 1985 Trust. He testified that it makes sense that all of the assets were transferred to the 1985 Trust because the trust was designed to protect the assets of the 1982 Trust for the members of SFN as they existed in 1985 before the passage of Bill C-31. It would not make sense that any assets would not be transferred to the 1985 Trust given the protectionist goal of the trust. (Affidavit of Paul Bujold September 12, 2011 paragraph 22; Questioning of Paul Bujold July 27, 2016 page 17-24 compressed transcript; Questioning of Paul Bujold May, 2014 pages 45-59)
- 7. The transfers were carried out by the Trustees of the 1982 Trust under the guidance of lawyers and accountants. (Affidavit of Paul Bujold September 12, 2011 paragraph 22 -24; Questioning of Paul Bujold July 27, 2016 page 26 compressed transcript)
- 8. The Trustees have been able to locate very little documentation in relation to the transfer of the assets from the 1982 Trust to the 1985 Trust. The fact that very little information is available is the main reason for the Trustee's application. (Affidavit of Paul Bujold September 12, 2011 paragraph 24; Questioning of Paul Bujold July 27, 2016 page 18-19 and page 27 compressed transcript; Questioning of Paul Bujold May 2014 page 68)
- Mr. Bujold has been cross-examined on the affidavits sworn and has provided undertakings in response to questions arising from the transfer of assets from the 1982 Trust to the 1985 Trust.
- 10. At the Questioning on Affidavit of Paul Bujold held on May 27 and 28, 2014, counsel for the Public Trustee had the opportunity to examine Mr. Bujold on the basis for his belief that all of the assets of the 1982 Trust were transferred to the 1985 Trust. Questioning on this issue continued from page 33 to 74. This issue was also the subject of Undertakings 12 through 18, all of which were answered by Mr. Bujold. Ultimately however, the conclusion reached was that there is very little information and that the relevant parties who were involved such as the accountants and lawyers no longer had any records. Mr. Bujold was also questioned by Mr. Molstad on July 27, 2016 on this issue. (Questioning of Paul Bujold July 27, 2016 compressed transcript pages 22-27, 32-33, 35-37)
- 11. From the questioning and undertakings, the following factual background has been identified:

- (a) The Trustees contacted individuals who were still alive who would have had knowledge of the financial dealings of the trusts in the relevant time period to attempt to obtain and review any relevant documentation relating to the transfer of assets that remained available. (Undertakings 12-19, 49 and 50 from Questioning of Paul Bujold May 27 and 28, 2014)
- (b) All relevant documentation in the Trustees' possession or obtained through enquiries have been disclosed to all parties and have been reviewed by all counsel.
- (c) All of the assets that were held in trust in the 1982 Trust in 1985 were transferred into the 1985 Trust. Thus it appears it was a trust to trust transfer.
- (d) There are no documents that Mr. Bujold reviewed nor any one he spoke to that led him to believe that there is any asset of the 1982 Trust that was not transferred into the 1985 Trust. Mr. Bujold was also questioned by Mr. Molstad on July 27, 2016 on this issue. (Questioning of Paul Bujold July 27, 2016 compressed transcript pages 22-27, 32-33, 35-37)
- 12. The Trustees have reviewed the limited documentation available obtained through their search efforts and agreed to make requests for additional documentation. Based on what has become available through the searches and after review of the limited documents available, and based on interviews conducted with the individuals involved with the trusts in 1985, it is understood that assets from the 1982 Trust transferred directly to the 1985 Trust. Mr. Bujold was also questioned by Mr. Molstad on July 27, 2016 on this issue. (Questioning of Paul Bujold July 27, 2016 compressed transcript pages 22-27, 32-33, 35-37)

#### Paragraphs 1-12 above rely on the following:

- > Affidavit of Paul Bujold September 12, 2011 paragraphs 9 -28, Exhibits A-E, G-J
- > Transcripts of Paul Bujold May 27-28, 2014, pages 33-45, 56-58, 64-73, 180-183
- Undertakings of Paul Bujold 12, 13,14, 15, 16, 17, 18, 49, 50
- > Transcripts of Paul Bujold July 27, 2016 pages 18 -29, 31-33, 35-37,
- Transcript of Paul Bujold July 27, 2016

- 13. The OPGT and Catherine Twinn asked for a clarification of the transfer issue to ensure that an accounting was not being requested and that an accounting could be requested in the future. The clarification provided on May 13, 2016 is attached hereto at **Tab 2**. (Clarification was entered as Exhibit 5 in Questioning of Paul Bujold July 27, 2016; Questioning of Paul Bujold July 27, 2016 page 28-29 compressed transcript)
- Once the parties were ad idem that the transfer relief sought did not limit a beneficiary's right to an accounting, the OPGT and Catherine Twinn were able to agree to the form of Order attached.

#### PART II - ISSUES

- 15. Approval of the Transfer of Assets from the 1982 Trust to the 1985 Trust.
- 16. Confirmation that the approval will not have an impact on the ability of beneficiaries to seek an accounting from the 1985 Trustees, including an accounting to determine the assets that were transferred into the 1985 Trust from the 1982 Trust or an accounting of the assets transferred into the 1982 Trust.

#### PART III - SUBMISSIONS

- Trust to the 1985 Trust is sought for certainty and to protect the assets of the 1985 Trust for the benefit of the beneficiaries. To unravel the assets of the 1985 Trust after 30 years would create undue costs and would have the potential impact of destroying the trust. Assets would have to be sold to pay the costs and to pay the taxes associated with the reversal of the transfer of assets. (Affidavit of Paul Bujold September 11, 2011 paragraph 28 and Questioning of Paul Bujold July 27, 2016 page 27-28 compressed version)
- 18. While there are limitations in the documents available, the Trustees have advised all parties they have exhausted all reasonable options to obtain documentation regarding the transfer of assets from the 1982 Trust to the 1985 Trust and have provided the limited documents the Trustees have located to the parties. There is evidence that the 1985 Trust was created to preserve the assets of the 1982 Trust for the members of the Sawridge First Nation for the members that existed in 1985 before Bill C-31 was enacted. The 1985 Trust was not a beneficiary of the 1982 Trust and thus should not have been able to receive assets directly. There are many methods by which a trust can transfer assets to another trust through a series of transactions. Given the high level of advice that the Trustees received, it is believed that the transaction was carried out

properly. Based on the searches conducted, there is simply no record of the necessary transactions.

- 19. The Trustees, OPGT and Catherine Twinn have had appropriate opportunity to consider the documentation available and to seek any further documentation they may have found informative. Based on the clarifications provided by the Trustees, including the assurances that the relief sought in this application in no way seeks an accounting of the assets of the 1985 Trust or the 1982 Trust, the OPGT and Catherine Twinn have consented to this application and do not seek additional evidence or information about the transfer of assets that were in the 1982 Trust at the time of their transfer into the 1985 Trust or about how the transfers from the 1982 Trust to the 1985 Trust were documented.
- In Pilkington v. Inland Revenue Commissioners HL 8 Oct 1962 Tab 3, the House of Lords 20. approved as appropriate a transfer of part of one trust to another trust for the benefit of one beneficiary. On the basis of this case and what has become known as the Pilkington principle, a trust to trust transfer can be appropriate where it is for the benefit of the beneficiary. At page 17 of the Pilkington case the Court effectively says that if the transfer could have been done from one trust to another trust through a series of transactions then it cannot be held to be inappropriate where the same result is achieved directly. Admittedly, Pilkington dealt with a payment for the benefit of one beneficiary to a trust for the benefit of that beneficiary and in the Sawridge trusts, the transfer was of the whole trust fund of one trust to another trust. However, it is submitted that the same principle is applicable as the transfer from the 1982 Trust to the 1985 Trust was for the benefit of the same beneficiaries and preserved their interest in the trust assets. In addition, it is submitted that the Sawridge trust to trust transfer could have been achieved through a series of transactions and as Pilkington says, the transfer should not be held as inappropriate just because it was done directly instead of indirectly if this was the case with the transfer to the 1985 Trust. It is submitted that it is in the best interests of the beneficiaries of the 1985 Trust that the transfer of assets be approved, nunc pro tunc.
- 21. The Trustees, the Office of the Public Guardian and Trustee and Catherine Twinn consent to an Order of this Court approving the transfer of assets from the 1982 Trust to the 1985 Trust, nunc pro tunc. The proposed Consent Order makes it clear that the approval of transfer of assets shall not operate as an accounting of the assets of the 1982 Trust and that the Order approving the transfer may not be relied upon by the Trustees in a future application to prevent a beneficiary from seeking an accounting of the 1985 Trust, including an accounting to determine the assets that were transferred from the 1982 Trust.

#### PART IV - REMEDY SOUGHT

The Trustees respectfully submit the attached Consent Order for approval by the Court. 22.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 17TH DAY OF AUGUST, 2016.

**DENTONS CANADA LLP** 

For Doris Bonora
Solicitors for the Trustees

REYNOLDS MIRTH RICHARDS & FARMER LLP

Marco S. Poretti

Solicitors for the Trustees

## TAB H

#### **CLERK'S STAMP**



**COURT FILE NUMBER** 

1103 14112

COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL CENTRE

Edmonton

IN THE MATTER OF THE TRUSTEE ACT, R.S.A. 2000, c, T-8, AS AMENDED

IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN OF THE SAWRIDGE INDIAN BAND, NO. 19 now known as SAWRIDGE FIRST NATION ON APRIL 15, 1985 (the \*1985 Sawridge Trust')

**APPLICANTS** 

ROLAND TWINN, MARGARET WARD, BERTHA L'HIRONDELLE, EVERETT JUSTIN TWIN AND DAVID MAJESKI as Trustees for the 1986 Sawridge Trust;

DOCUMENT

LITIGATION PLAN

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Denions Canada LLP 2900 Manulife Place 10180 - 101 Street Edmonton, AB T5J 3V5

Attention: Telephone:

Fax:

Dorls C.E. Bonora (780) 423-7100 (780) 423-7276 File No: 551880-001-DCEB

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### 1. The remaining steps and procedures are to be completed on or before the dates specified below:

NO.	ACTION	DEADLINE
1.	Case Management Meeting	December 18, 2018
2.	Jurisdiction Application - Deadline for the Trustess to file their Affidavit in relation to the Jurisdiction Question	January 11, 2019
3.	Application to be brought by any non-party to the litigation who wishes to participate in the Jurisdiction Application, other than beneficiaries or potential beneficiaries, the participation rights of whom are addressed in the Consent Order consented to by the parties and by counsel for Shelby Twinn and Patrick Twinn. Application by any beneficiary or potential beneficiary to participate in the Jurisdiction Application in a more significant way than is provided in the said Consent Order.	January 31, 2019
4.	Participation Application in person on February 11, 2019 alternatively, filing of written argument in response to participation application if application proceeds in writing (if required)	February 11, 2019
5.	Jurisdiction Application – Questioning by the OPGT and Catherine Twinn on the Trustees' Affidavit to take place no later than  (May be done by written interrogalories)	February 8, 2019
6.	Jurisdiction Application – Answers to Undertakings arising from the questioning on the Trustees' Affidavit are due	February 13, 2019
7.	Jurisdiction Application - Any rebuttel Affidavits to be filed by the OPGT and Catherina Twinn are due	February 27, 2019
8.	Jurisdiction Application - Questioning by the Trustees on the Rebuttal Affidavits filed by the OPGT and Catherine Twinn will take place no later than (May be done by written interrogatories)	March 8, 2019
9.	Jurisdiction Application - Answers to Undertakings, If any, from the OPGT and Catherine Twinn are due	March 22, 2019
1Ô.	Jurisdiction Application - Brief of the Trustees is due	March 29, 2019
11.	Jurisdiction Application – Brief of the OPGT and Catherine Twinn are due	April 12, 2019

Ų. Į	ACTION	A PARADEADLINE
12.		April 12, 2019
13.	Jurisdiction Application - Reply Brief of the Trustees is due	April 18, 2019
14.	Jurisdiction Application Hearing	April 25, 2019
15.	Questioning on Affidevit of Records to be completed in the time period	30 days following both the issuance of the decision for the Jurisdiction Application and the expiration of any relevant appeal period
16.	Answers to Undertakings from questioning on Affidavit of Records by	45 days following the completion of Questioning on Affidavit of Records
17.	All other steps to be determined in a case management hearing	TBD

The Honourable Justice J. T. Henderson

CONSENTED TO BY: MCLENNAN ROSS LLP	HUTCHISON LAW
Crista Osualdini	James Harchisen
Counsel for Catherine Twinn	Counsel for the Office of the Public Guardian and
DENTONS CANADA LLP	Trustee
Doris Bonora Counsel for the Sawridge Trustees	<del></del>

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NO.	ACTION	DEADLINE
12.	beneficiary or potential beneficiary (limited to 5 pages)  ** this item is subject to outcome of any additional Participation Application —Shelby Twinn and Patrick	April 12, 2019
13.	Twinn shall abide by this deadline  Jurisdiction Application Reply Brief of the Trustees is due	April 18, 2019
14.	Jurisdiction Application Hearing	April 25, 2019
15,	Questioning on Affidavit of Records to be completed in the time period	30 days following both the issuance of the decision for the Jurisdiction Application and the expiration of any relevant appeal period
16.	Answers to Undertakings from questioning on Affidavit of Records by	45 days following the completion of Questioning on Affidavit of Records
17.	Alt other steps to be determined in a case management hearing	TBD

The Honourable Justice J. T. Henderson

CONSENTED TO BY: MCLENNAN ROSS LLP

**HUTCHISON LAW** 

Criste Osualdini Counsal for Catherine Twinn

PENTONS CANADA LLP

Janet Hutchison Counsel for the Office of the Public Guardian and Trustee

ons Borlora durise for the Sawridge Trustees

### TAB I

Action No.: 1103 14112 E-File No.: EVQ16SAWRIDGEBAND3 Appeal No.:

### IN THE COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL CENTRE OF EDMONTON

IN THE MATTER OF
THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY
CHIEF WALTER PATRICK TWINN, OF THE SAWRIDGE INDIAN
BAND, NO. 19 now known as SAWRIDGE FIRST NATION ON
APRIL 15, 1985 (the "1985 Sawridge Trust")

ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE, and CLARA MIDBO, as Trustees for the 1985 Sawridge Trust

Applicants

PROCEEDINGS

Edmonton, Alberta August 24, 2016

Transcript Management Services, Edmonton 1000, 10123 99th Street Edmonton, Alberta T5J-3H1 Phone: (780) 427-6181 Fax: (780) 422-2826

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August 24, 2016	Morning Session
· · · · · · · · · · · · · · · · · · ·	Manning Section
The Honourable	Court of Queen's Bench of Alberta
Mr. Justice Thomas	· ·
7	
C.K.A. Platten, Q.C.	For Catherine Twinn
C. Osuladini	For Catherine Twinn
L. Maj	For the Minister of Aboriginal Affairs and
	Northern Development
2 J.L. Hutchison	For the Public Trustee of Alberta
B D.C. Bonora	For Sawridge Trustees
A. Loparco	For Sawridge Trustees
N.L. Golding, Q.C.	For Patrick Twinn, et al
E.H. Molstad, Q.C.	For Sawridge First Nation
7 G. Joshee-Arnal	For Sawridge First Nation
S.A. Wanke	For Morris Stoney, et al
C. Wilde	Court Clerk
Discussions	
3	
THE COURT:	Good morning.
5	
Are you going to do	the introductions?
7	
B MR. MOLSTAD:	I have been assigned that task, Sir.
)	
THE COURT:	All right.
2 MR. MOLSTAD:	We have, representing the Sawridge Truste
Ms. Bonora and Ms.	Loparco.
1	
We have representing	ng the Public Trustee, Ms. Hutchison. Mr. Meehan is not with
5 today.	
7	
8 We have representing	g Catherine Twinn, Ms. Platten, and Ms. Osualdini.
)	

1 MR. MOLSTAD: And it's tab D of the brief enclosed, but this is 2 our letter of January 18th. 4 THE COURT: Yeah. Got that. Thanks. I'm just --Now, it -- you know, we were confused by the 6 MR. MOLSTAD: inquiry because this contains a list of the adult parents, that is Schedule 3 is a list of the 8 adult parents who have made application for their children for membership, and the 9 contact information and the number of children applying. It was not something that we 10 were directed to provide, but we did in order that they had full and sufficient information. 11 12 We asked, in our letter, for an application from the Public Trustee based on this, because we didn't understand their request, and --13 14 This is your -- you're talking about your April 15 THE COURT: 16 one now. 17 Yeah. 18 MR. MOLSTAD: 19 20 THE COURT: Yeah. 21 22 MR. MOLSTAD: Yeah. So -- and we never did get a response to that. But as you have in front of you, when we filed our written submissions on March 23 24 15th, of 2016, that was based upon your directive that we do so. And we assumed that the Public Trustee ought to have filed written submissions by January 29th, because it 25 26 seemed to us that if we're filing written submissions as a respondent, we should have something to respond to. However, as you know, the Public Trustee had not done that. It 27 28 filed simply a Notice of Application setting out the grounds. 29 30 And in April, of 2016, we told the Public Trustee that we took the position that they 31 hadn't complied with your order of December, 2015, as they did not file any written 32 submissions, but what we did say is let's get this on. We made, as I stated earlier, a 33 reasonable assumption that if we have to file written submissions as a respondent, that we 34 have to file it in response to something. 35 36 We any -- in any event, we told the Public Trustee as long as we could agree to a 37 schedule and the Public Trustee would provide particulars of the evidence to be relied 38 upon, with copies, we would be prepared to proceed on the basis that they would make 39 written submissions, we would make a reply. And that procedure was agreed to. It's set 40 out in Exhibit 2 to the questioning that we conducted of Mr. Bujold, and it sets out that 41 they file written submissions, we file a reply, and later on we agreed, because we were

dealing with costs, that they could then file a reply in relation to our submission on costs. But it did provide that the Public Trustee would be required to give us particulars of the evidence to be relied upon in both applications by July 7, 2016, as well as copies of the evidence. And on July 7th, the Public Trustee served us with notice of the records it intended to rely upon in relation to its application. And that's found at tab 9 of Sawridge First Nation's written brief.

And I want to take you to that, because this is July 7th in terms of timing, and these are two applications that relate to both the assets and the beneficiaries that are still fairly broad in terms of what they were seeking. But the evidence on page 2 of their letter, which is the fourth page in, lists the evidence that they will be relying upon in relation to both the membership application and the assets application. And there's transcripts, affidavits, supplementary — supplemental affidavits, undertakings, and a fairly lengthy list on both, but one of them is the same in both. It's six in one and five in the other. It says:

Catherine Twinn's affidavit dated September 23rd, 2015, filed in this action on September 30th, 2015, our references will be limited mainly to paragraph 29, period. 29(h) will be referenced in relation to any costs applications made by the respondents.

The word mainly didn't give us comfort, because the position is that this is evidence before the Court, and if we take issue with it, we have to address it.

We arranged for questioning of Mr. Bujold, and this occurred on July 27th. When we attended at the questioning of Mr. Bujold, the Public Trustee advised us that they would no longer be proceeding with the settlement application. And as you know, as you've signed the consent order, and we've got a copy of it at tab 10 of our brief, the preamble of this consent order is, in our submission, relevant and indicative of the information that the Public Trustee was in possession of, because what it says is that:

 The Sawridge Trustees have exhausted all reasonable options to obtain a complete documentary record regarding the transfer of the assets from the '82 Trust to the '85 Trust, that the parties have been given access to all document regarding the transfer of the assets, and the Trustees are not seeking an accounting in relation to the transfer of these assets, and noting that the assets from the '82 Trust were transferred to — into the 1985 Trust.

And they talk about the little information available.

```
I think that my friend, Ms. Bonora, made mention of this in her brief. The purpose of the
 1
      transfer in '82, '85, in terms of transfer from trust, was to avoid any claim that others
2
 3
      might make in relation to these assets after the enactment of Bill C-31. So Sawridge First
4
      Nation would be highly motivated to ensure that those that were acting as trustees made
5
      the transfer of all assets from the '82 Trust to the '85 Trust. That was the reason. The
6
      reason clearly was one where it was in everyone's best interests to make sure the transfer
7
      took place.
 8
9
      I would point out that the resolution of this matter, in accordance with this order, is
      similar to the resolution that was proposed by the Sawridge Trustees to the Public Trustee
10
      on May 13th, 2016. And a copy of that is Exhibit 5 to the questioning of Mr. Bujold.
11
12
13
      When Mr. Bujold was questioned on July 27th --
14
15 THE COURT:
                                              I take it that's in the file.
16
17 MR. MOLSTAD:
                                              It's been filed.
18
19 THE COURT:
                                              Okay. Right.
20
                                              Yes. The questioning and the exhibits --
21 MR. MOLSTAD:
22
                                              Well, just so --
23 THE COURT:
24
25 MR. MOLSTAD:
                                              -- to the questioning.
26
27 THE COURT:
                                              Just so you know, of course, I mean, the
      systems internally have totally broken down. So it never made it to my desk, but. . .
28
29
                                              Yeah, yeah. Well, if you have trouble finding
30 MR. MOLSTAD:
31
      it, Sir, we can send you --
32
33 THE COURT:
                                              Yeah. No, I just --
34
                                              -- another copy.
35 MR. MOLSTAD:
36
37 THE COURT:
                                              -- want to get it on the record so. . .
38
                                              Yeah.
39 MR. MOLSTAD:
40
41 THE COURT:
                                              I'll find it eventually.
```

# TAB J

This is Exhibit \* L > referred to in the Affidavit of

Sworn before me this

.dayO

A Notary Public, A Commissioner for Came
SAWRIDGE BAND INTER VIVOS BETTLEMENT

MARCO S. PORETTI

DECLARATION OF TRUST

THIS DEED OF SETTLEMENT is made in duplicate the 15 th day of April, 1985

BETWEEN:

CHIEF WALTER PATRICK TWINN, of the Sawridge Indian Band, No. 19, Slave Lake, Alberta, (hereinafter called the "Settlor"),

OF THE FIRST PART,

- and -

CHIEF WALTER PATRICK TWINN, GEORGE V. TWIN and SAMUEL G. TWIN. of the Sawridge Indian Band, No. 19, Slave Lake, Alberta, (hereinafter collectively called the "Trustees"),

OF THE SECOND PART.

WHEREAS the Settlor desires to create an inter vivos settlement for the benefit of the individuals who at the date of the execution of this Deed are members of the Sawridge Indian Band No. 19 within the meaning of the provisions of the Indian Act R.S.C. 1970, Chapter I-6, as such provisions existed on the 15th day of April, 1982, and the future members of such band within the meaning of the said provisions as such provisions existed on the 15th day of April, 1952 and for that purpose has transferred to the Trustees the property described in the Schedule herato;

AND WHEREAS the parties desire to declare the trusts, terms and provisions on which the Trustees have agreed to hold and administer the said property and all other properties that may be acquired by the Trustees hereafter for the purposes of the settlement;

NOW THEREFORE THIS DEED WITNESSETH THAT in consideration of the respective covenants and agreements herein contained, it is hereby covenanted and agreed by and between the parties as follows:

- 1. The Settlor and Trustees hereby establish a trust fund, which the Trustees shall administer in accordance with the terms of this Deed.
- In this Settlement, the following terms shall be interpreted in accordance with the following rules:
  - (a) "Beneficiaries" at any particular time shall mean all persons who at that time qualify as members of the Sawridge Indian Band No. 19 pursuant to the provisions of the Indian Act R.S.C. 1970, Chapter I-6 as such provisions existed on the 15th day of April, 1982 and, in the event that such provisions are amended after the date of the execution of this Deed all persons who at such particular time

would qualify for membership of the Sawridge Indian Band No. 19 pursuant to the said provisions as such provisions existed on the 15th day of April, 1982 and, for greater certainty, no persons who would not qualify as members of the Sawridge Indian Band No. 19 pursuant to the said provisions, as such provisions existed on the 15th day of April, 1982, shall be regarded as "Beneficiaries" for the purpose of this Settlement whether or not such persons become or are at any time considered to be members of the Sawridge Indian Band No. 19 for all or any other purposes by virtue of amendments to the Indian Act R.S.C. 1970, Chapter I-6 that may come into force at any time after the date of the execution of this Deed or by virtue of any other legislation enacted by the Parliament of Canada or by any province or by virtue of any regulation, Order in Council, treaty or executive act of the Government of Canada or any province or by any other means whatsoever; provided, for greater certainty, that any person who shall become enfranchised, become a member of another Indian band or in any manner voluntarily cease to be a member of the Sawridge Indian Band No 19 under the <u>Indian Act</u> R.S.C. 1970, Chapter I-6, as amended from time to time, or any consolidation thereof or successor legislation thereto shall thereupon cease to be a Beneficiary for all purposes of this Settlement; and

- (b) "Trust Fund" shall mean:
  - (A) the property described in the Schedule hereto and any accumulated income thereon;
  - (B) any further, substituted or additional property and any accumulated income thereon which the Settlor or any other person or persons may donate, sell or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, or otherwise acquired by, the Trustees for the purposes of this Settlement;
  - (C) any other property acquired by the Trustees pursuant to, and in accordance with, the provisions of this Settlement; and
  - (D) the property and accumulated income thereon (if any) for the time being and from time to time into which any of the aforesaid properties and accumulated income thereon may be converted.

- The Trustees shall hold the Trust Fund in trust and shall deal with it in accordance with the terms and conditions of this Deed. No part of the Trust Fund shall be used for or diverted to purposes other than those purposes set out herein. The Trustees may accept and hold as part of the Trust Fund any property of any kind or nature whatsoever that the Settlor or any other person or persons may donate, sell or otherwise transfer or cause to be transferred to, or vest or cause to be vested in, or otherwise acquired by, the Trustees for the purposes of this Settlement.
- 4. The name of the Trust Fund shall be "The Sawridge Band Inter Vivos Settlement", and the meetings of the Trustees shall take place at the Sawridge Band Administration Office located on the Sawridge Band Reserve.
- 5. Any Trustee may at any time resign from the office of Trustee of this Settlement on giving not less than thirty (30) days notice addressed to the other Trustees. Any Trustee or Trustees may be removed from office by a resolution that receives the approval in writing of at least eighty percent (80%) of the Beneficiaries who are then alive and over the age of twenty-one (21) years. The power of appointing Trustees to fill any vacancy caused by the death, resignation or removal of a Trustee shall be vested in the continuing Trustees or Trustee of this Settlement and such

power shall be exercised so that at all times (except for the period pending any such appointment, including the period pending the appointment of two (2) additional Trustees after the execution of this Deed) there shall be at least five (5) Trustees of this Settlement and so that no person who is not then a Beneficiary shall be appointed as a Trustee if immediately before such appointment there is more than one (1) Trustee who is not then a Beneficiary.

5. The Trustees shall hold the Trust Fund for the benefit of the Beneficiaries; provided, however, that at the end of twenty-one (21) years after the death of the last survivor of all persons who were alive on the 15th day of April, 1982 and who, being at that time registered Indians, were descendants of the original signators of Treaty Number B, all of the Trust Fund then remaining in the hands of the Trustees shall be divided equally among the Beneficiaries then living.

Provided, however, that the Trustees shall be specifically entitled not to grant any benefit during the duration of the Trust or at the end thereof to any illegitimate children of Indian women, even though that child or those children may be registered under the <u>Indian Act</u> and their status may not have been protested under section 12(2) thereunder.

The Trustees shall have complete and unfettered discretion to pay or apply all or so much of the net income of the Trust Fund, if any, or to accumulate the same or any portion thereof, and all or so much of the capital of the Trust Fund as they in their unfettered discretion from time to time deem appropriate for any one or more of the Beneficiaries; and the Trustees may make such payments at such time, and from time to time, and in such manner and in such proportions as the Trustees in their uncontrolled discretion deem appropriate.

part of the Trust Fund in any investments authorized for Trustees' investments by the Trustees' Act, being Chapter T-10 of the Revised Statutes of Alberta, 1980, as amended from time to time, but the Trustees are not restricted to such Trustee Investments but may invest in any investment which they in their uncontrolled discretion think fit, and are further not bound to make any investment nor to accumulate the income of the Trust Pund, and may instead, if they in their uncontrolled discretion from time to time deem it appropriate, and for such period or periods of time as they see fit, keep the Trust Fund or any part of it deposited in a bank to which the Bank Act (Canada) or the Quebec Savings Bank Act applies.

- The Trustees are authorized and empowered to do all acts necessary or, in the opinion of the Trustees, desirable for the purpose of administering this Settlement for the benefit of the Beneficiaries including any act that any of the Trustees might lawfully do when dealing with his own property, other than any such act committed in bad faith or in gross negligence, and including, without in any manner to any extent detracting from the generality of the foregoing, the power
  - (a) to exercise all voting and other rights in respect of any stocks, bonds, property or other investments of the Trust Fund;
  - (b) to sell or otherwise dispose of any property held by them in the Trust Fund and to acquire other property in substitution therefor; and
  - (c) to employ professional advisors and agents and to retain and act upon the advice given by such professionals and to pay such professionals such fees or other remuneration as the Trustees in their uncontrolled discretion from time to time deem appropriate (and this provision shall apply to the payment of professional fees to any Trustee who renders professional services to the Trustees).
- Administration costs and expenses of or in connection with the Trust shall be paid from the Trust Pund,

including, without limiting the generality of the foregoing, reasonable reimbursement to the Trustees or any of them for costs (and reasonable fees for their services as Trustees) incurred in the administration of the Trust and for taxes of any nature whatsoever which may be levied or assessed by federal, provincial or other governmental authority upon or in respect of the income or capital of the Trust Fund.

- 10. The Trustees shall keep accounts in an acceptable manner of all receipts, disbursements, investments, and other transactions in the administration of the Trust.
- 11. The provisions of this Settlement may be amended from time to time by a resolution of the Trustees that receives the approval in writing of at least eighty percent (80%) of the Beneficiaries who are then alive and over the age of twenty-one (21) years provided that no such amendment shall be valid or effective to the extent that it changes or alters in any manner, or to any extent, the definition of "Beneficiaries" under subparagraph 2(a) of this Settlement or changes or alters in any manner, or to any extent, the beneficial ownership of the Trust Fund, or any part of the Trust Fund, by the Beneficiaries as so defined.
- 12. The Trustees shall not be liable for any act or omission done or made in the exercise of any power, authority or discretion given to them by this Deed provided such

act or omission is done or made in good faith; nor shall they be liable to make good any loss or diminution in value of the Trust Fund not caused by their gross negligence or bad faith; and all persons claiming any beneficial interest in the Trust Fund shall be deemed to take notice of and subject to this clause.

13. Subject to paragraph 11 of this Deed, a majority of fifty percent (50%) of the Trustees shall be required for any decision or action taken on behalf of the Trust.

Each of the Trustees, by joining in the execution of this Deed, signifies his acceptance of the Trusts herein. Any other person who becomes a Trustee under paragraph 5 of this Settlement shall signify his acceptance of the Trust herein by executing this Deed or a true copy hereof, and shall be bound by it in the same manner as if he or she had executed the original Deed.

14. This Settlement shall be governed by, and shall be construed in accordance with the laws of the Province of

Alberta.

IN WITHESS WHEREOF the parties hereto have executed this Deed.

in the presence of:	<b>:</b> '	
Bruce & Sham	A. Settlor (classic)	
BOX 326 Alone Pake Olta		
Show & Show	B. Trustees:	ì
HAND I DAIL	1. Maket de	,
BOX 326, Mar Pake Alta		
Shau & Dhom	2. G/h:	
BOX 326 blane late Alto	-	
Show & Show	3. Sam 2	
COX 326 Mars fate a	lh	
Schedu		

One Hundred Dollars (\$100.00) in Canadian Currency.

# TAB K

Department of Justice Ministère de la Justice Canada

Legal Services
Indian Affairs and Northern Development
Room 1018, Les Terrasses de la Chaudière
10 Wellington Street
Hull, Québec
K1A 0H4

Hoy 9 3 29 PH 194

November 9, 1994

#### **YIA FAX NUMBER (416) 863-0871**

Mr. Maurice C. Cullity, Q.C. Davies, Ward & Beck P.O. Box 63, Suite 1400 1 First Canadian Place Toronto, Ontario M5X 1B1

Sawridge Indian Band Expenditures pursuant to Sections 64 and 66 of the Indian Act

Dear Mr. Cullity:

We are in receipt of your letter of October 24th, 1994.

Although we note the concern expressed in your letter regarding the inclusion on the list of amounts for recurring and other expenditures which would not involve the acquisition of specific assets, we should remember that the suggestion for the production of such a statement originated from your letter of April 19, 1994.

We and our client, the Department of Indian Affairs and Northern Development, are concerned regarding the delay in resolving this matter.

In an attempt to accelerate the resolution of the current situation, we are prepared to limit the scope of the statement to be provided by your client's auditors. Accordingly, we hereby request confirmation by way of statement from Sawridge's accountants that all funds that were released for the acquisition of capital assets were in fact used for that specific purpose, and further confirmation that those assets are held in trust, or have been converted into other assets which are held in trust, for the members of the Band. In other words, at this time we do not seek confirmation regarding amounts released for purposes other than the acquisition of capital assets.

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We would appreciate receiving confirmation of this proposal at your earliest convenience.

Yours very truly,

Margaret McIntosh Counsel

### DAVIES, WARD & BECK

BARRISTERS & SOLICITORS

MAURICE C. CULLITY, Q.C. DIRECT LINE (416) 863-5522

File No. 21902

#### VIA TELECOPIER

October 20, 1994

Ms. Margaret McIntosh
Counsel, Legal Services
Indian Affairs and Northern Development
Room 1018
Les Terrasses de la Chaudière
10 weinington Street
Hull, Quebec
K1A 0H4

Dear Ms. McIntosh:

#### Sawridge

Further to our recent discussions, I am writing to confirm that I do not believe that the list of expenditures provided with your letter of October 5, 1994 is helpful for the purposes we have discussed. Many of the amounts referred to on the list relate to recurring expenditures, such as legal and other professional fees, and some are as small as \$500. They extend back over a period of 20 years and to ask for a statement from the auditors that all were properly expended on the particular purposes referred to in the BCRs would be prohibitively expensive even if, after such a period, it were possible to deal with them.

In my discussion with Mr. Gregor MacIntosh on April 7, 1994, I was told that the Department's concern was to ensure that all funds distributed to the Band pursuant to section 64 or section 69 were either held in trust, or could be traced into assets held in trust, for members of the Band. I suggested that the auditors might be asked to certify that all funds distributed to the band by the Minister pursuant to section 64 or section 69 of the Indian Act for the acquisition of specific assets, or property or investments into which those funds have been converted, are now held in trusts for members of the band. In my letter of April 19 to Mr. Van Iterson, I referred too generally to funds distributed to the band for specific purposes pursuant to those sections of the Indian Act. A large number of the amounts on the list you have provided refer to section 66 of the Act but, more importantly, many of them were amounts for recurring and other expenditures that would not involve the acquisition of assets and could not be expected to end up in trusts or otherwise in property of the Band.

SAWRIDGE S LAKE

DAVIES, WARD & BECK

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In order to try to resolve this matter without further delay and expense, I wonder whether it would be an acceptable solution to ask the auditors to confine their attention to amounts on your list of \$500,000 or more that were advanced for the purpose of acquiring specific assets. If this is not satisfactory from the viewpoint of the Department, perhaps you would suggest another alternative.

As I have indicated to you on a number of occasions, we do not agree that the Department is entitled to demand details of expenditures made by the band in the past or with respect to the assets that it now holds. At the same time, in the interests of avoiding the litigation that will be inevitable if your client intends to make unreasonable demands, I have attempted to find a solution that will satisfy the Department without involving the Band in unnecessary expense. I still wish to do this if it is possible.

Yours very truly,

Maurice C. Cullity

MCC/dp

cc: M. McKinney, Esq.

Department of Justice Ministère de la Justice Canada

Ottawa, Canada K1A 0H8

Legal Services Indian Affairs and Northern Development Room 1018, Les Terrasses de la Chaudiere 10 Wellington Street Huli, Quebec K1A 0H4

August 29, 1994

Mr. Maurice C. Cullity, Q.C. Davies, Ward Beck P.O. Box 63, Suite 4400 1 First Canadian Place Toronto, Ontario MSX 1B1

Subject:

Sawridge Trusts

Dear Mr. Cullity:

Further to our telephone conversation of August 9, 1994, we continue to anticipate a statement from the auditors of the Sawridge Indian Band to the effect that funds released to the Band pursuant to sections 64 and 69 of the Maian Acr are being held in trust for the members of the Band, and that any funds were used for the purposes for which they were authorized by the Minister of Indian Affairs and Northern Development,

My client is anxious to have this matter settled as expeditiously as possible. Accordingly, I respectfully request some written indication of when this information will be available.

Thank you for your consideration of this matter.

The Cittle Dock

Margaret McIntosh

Counsel

Canada'

March 21, 1994

Davies Ward & Beck Barristers & Solicitors Box 63, 44th Floor 1 Canadian Place Toronto, Ontario M5X 1B1

ATTENTION: M. Cullity

Dear Sir:

#### RE: Sawridge Trusts

Further to our recent telephone conversation, we wish to confirm that the Department was aware of the existence of Trusts for the benefit of Sawridge Band Members for quite some time. This knowledge can be attributed to the Department from several sources including:

- 1. Annual Audits
- 2. Capital Project Funds Requests
- 3. Self-Government Negotiations
- 4. Early Trust discussions
- 1. Annual Audits

The annual audit reports show an amount each year as "Distributions to Band Members". In the March 31, 1984 statement Note #16 reads:

16. Distributions to Band Members

On December 17, 1983 the Members of the Band transferred certain assets with a carrying value of \$17,951,590 to "The Sawridge Band Trust", a trust formed for the benefit of the members of the Sawridge Indian Band".

<sup>☐</sup> HEAD OFFICE: BOX 326, SLAVE LAKE, ALBERTA, TOG 2A0 • TEL: (403) 849-4311 • FAX: (403) 849-3446 ☐ BRANCH OFFICE: # 766, 10201 JASPER AVENUE, EDMONTON, ALBERTA, T5J 3N7 • TEL: (403) 421-4845 • FAX: (403) 428-7022

Indian and Northern Affairs Canada Affaires Indiennes et du Nord Canada

Assistant Deputy Minister

Sous-ministre adjoint

Ollowa, Canada K1A 0114



MAR 3 0 100%

Mr. Maurice C. Cullity Davies, Ward & Beck Barristers & Solicitors P.O. Pox 63, Suite 4400 1 First Canadian Place TORONTO ON M5% 181



Dear Mr. Cullity:

Thank you for your letter of March 16, 1994 concerning the existence of trusts that were apparently established on behalf of members of the Sawridge Band. I appreciate your willingness to meet to discuss this matter.

A meeting is desirable because of the Minister's statutory responsibilities for ensuring that moneys released to the band, pursuant to sections 61 to 69 of the Indian Act, are used for the benefit of the band and its members.

It may be that a relatively small amount of infomation on the above trusts, the existence of which was unknown to the Minister, will provide sufficient assurances that the above concerns have been met. We may also be assured that the assets are being held in those trusts for the benefit of all band members, including those who may be entitled to membership, as will be determined by the current related litigation.

To make the necessary arrangements for the meeting, would you please contact my office at (819) 953-5577.

Yours sincerely,

Original by/par W. VAN ITERSON

W. (Bill) Van Iterson A/Assistant Deputy Minister Lands and Trust Services

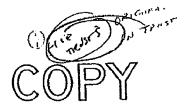
c.c.: Chief Walter Twinn
Gregor MacIntosh
Ken Kirby
Chris McNaught

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### DAVIES, WARD & BECK

BARRISTERS & SOLICITORS



MAURICE C. CULLITY, Q.C. DIRECT LINE (416) 863-5522

File No. 21902

March 16, 1994

W. Van Iterson, Esq.
A/Assistant Deputy Minister
Lands and Trust Services
Indian and Northern Affairs Canada
Ottawa, Ontario
K1A 0H4

Dear Sir:



#### Sawridge Indian Band

I refer to the letters of May 7, 1994 and December 23, 1993 addressed to Chief Walter Twinn.

For some years we have been retained to advise the Band with respect to, among other matters, any trusts established for its members. Accordingly, I have been instructed to respond to any questions you may have in connection with such trusts to the extent that you are entitled to receive answers.

You will understand that the Band, like any other community, organization or entity engaged in business and other activities for the benefit of its members is reluctant to release financial information relating to such activities to anyone other than such members unless it determines that this is in its best interests or is required by law. For this reason, although I have no objection to meeting with individuals from your department, it would be helpful if you would indicate in advance why you believe such a meeting to be desirable and the grounds, if any, on which you believe you are entitled to receive information about the trusts referred to in the letter from Ms. Porteous.

It would be appreciated if you would address your reply and any further correspondence or questions on this matter to this office.

Yours very truly,

Maurice C. Cullity

MCC/dp

ce: Chief Walter Twinny

bcc: M. Henderson

P.O. BOX 63, SUTTE 4400 1 FIRST CANADIAN PLACE, TORONTO, ONTARIO, CANADA M5X 1B1

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# TAB L

# COPY

Clerk's stamp:



**COURT FILE NUMBER** 

1103 14112

COURT

SANGASHI SANGASHI

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

**EDMONTON** 

IN THE MATTER OF THE TRUSTEE ACT, R.S.A. 2000, c. T-8, AS AMENDED, and

IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN, OF THE SAWRIDGE INDIAN BAND, NO. 19 now known as SAWRIDGE FIRST NATION ON APRIL 15, 1985 (the "1985 Sawridge Trust")

**APPLICANT** 

ROLAND TWINN, MARGARET WARD, TRACEY SCARLETT, EVERETT JUSTIN TWIN AND DAVID MAJESKI, as Trustees

for the 1985 Sawridge Trust ("Sawridge Trustees");

**DOCUMENT** 

**BRIEF OF THE SAWRIDGE TRUSTEES** 

**JURISDICTION APPLICATION RETURNABLE APRIL 25,** 2019

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT 10180 - 101 Street

**Dentons Canada LLP** 2900 Manulife Place Edmonton, AB T5J 3V5

Attention:

Doris C.E. Bonora (780) 423-7100

Telephone: Fax:

(780) 423-7276

File No:

551860-001-DCEB

Hutchison Law #190 Broadway Business Square 130 Broadway Boulevard Sherwood Park, AB T8H 2A3

Attention: Janet L. Hutchison

Counsel for the Office of the Public Guardian and Trustee

Biamonte LLP 1600, 10025 – 102A Avenue Edmonton, AB T5J 2Z2

Attention: Françoise H. Belzil

Counsel for Shelby Twinn and Patrick Twinn Pursuant to the Participation Order of The Honourable Justice J.T. Henderson rendered December 21, 2018 McLennan Ross LLP 600 McLennan Ross Building 12220 Stony Plain Road Edmonton, AB T5N 3Y4

Attention: Crista Osualdini

Counsel for Catherine Twinn

- 42. The trust not only discriminates against women and who they can marry, it also discriminates against children who are illegitimate. The family status of children has long been eliminated as a descriptor or as a factor that affects children. Further, the fact that the old Indian Act discriminates against illegitimate children, also affects women's rights. A woman must decide whether to marry or not and her choice of partner is key. The same conditions do not apply to men. A women must decide whether to have the father of her child acknowledged on the child's birth certificate. All of these factors affect whether a person is a beneficiary.
- 43. In our community at large, we do not dictate to women, whether to get married nor who they can marry, nor do we dictate that they must have children within a married relationship. The old Indian Act did not recognize a common law or adult interdependent relationship and thus even marital status is impacted. By codifying the old Indian Act in the 1985 Trust, the old stigmas around illegitimacy continue and the old dependencies of women on men in a married relationship continue.
- 44. Indigenous people face many challenges and the 1986 Trust is providing benefits to help with many of these challenges. It currently provides benefits as set out above. The Trustees have determined that the 1985 Trust will do the same once the definition of beneficiaries is determined.<sup>33</sup>
- 45. Sawridge First Nation is a community whose members can benefit from the Trust. There are addiction issues and housing issues. The vision for the 1985 Trust was to assist the community with issues and to assist members to be funded while seeking education or while they are sick or while they are elderly. Such provisions should not be conditional on meeting discriminatory provisions.
- This discrimination is effectively illustrated by comparing the treatment of two beneficiaries recognized in the Sawridge #5 Decision. <sup>34</sup> Justice Thomas recognized a female person as a beneficiary. A male person was also recognized. The female person will be a beneficiary now but if she marries a non-indigenous man she will cease to be a beneficiary and so will her children. The male person is a beneficiary now. He is married to someone who is not indigenous and, he has not lost his right to be a beneficiary because of his marriage. In fact his new wife, regardless of her indigenous status, will be a beneficiary; however, because the male person's child was born before he got married, his child will be deemed illegitimate and therefore will not be a beneficiary. By contrast, if the male person has another child while he is married, and is

<sup>33</sup> Distribution Proposal at TAB 9 (The Trustees have recently instituted a new policy on benefits that is substantially the same but this document has not yet been entered in evidence)

<sup>34 1985</sup> Sawridge Trust v Alberta (Public Trustee), 2017 ABQB 377, paras 6 to 10 (Case Management Decision [Sawridge #5] by Thomas J) [TAB 24]

therefore a legitimate child, that child will be a beneficiary. Thus, there is discrepancy not just between men and women, and not just for illegitimate children, but also discrimination between siblings sharing the same parent.<sup>35</sup>

47. These examples of discrimination simply cannot be reconciled with our constitutional and societal norms. The Trustees sumit that there are more than adequate public policy grounds to merit court intervention.

## f. Consequence of Application of Public Policy Principles

- 48. If the Court accepts that the Definition runs contrary to public policy, then the principles applied in the two lines of cases discussed above give rise to different potential consequences. Where a gift is subject to a condition that is held to be invalid as contrary to public policy, the application of the public policy principle has the consequence that the condition is invalidated, ordinarily leaving the gift free of the condition.<sup>36</sup>
- 49. On the other hand, where provisions of a quasi-public trust are found to be invalid as being contrary to public policy, the Court can change the provisions of the quasi-public trust to bring them into accord with public policy, as was done, for example, in the Canada Trust Co. case.
- 50. There are two main possibilities:37
  - (a) The first possibility is that, even though the 1985 Trust is not a charitable trust, the court should extend the application of the cy-près jurisdiction so that it would apply to a trust for the benefit of a community of persons even though it is not a charitable trust. In such case the discriminatory language would be struck.
  - (b) The alternative is to take the position that the appropriate remedy is the deletion of the parts of the declaration of trust which require discrimination to be applied as a condition of being considered a beneficiary and as such offend public policy. This position would be consistent with the consequences of the invalidity of a condition in the first line of cases discussed above since the invalid condition is effectively deleted.
- 51. The Trustees suggest that the first possibility would amount to an expansion of the cy-pres jurisdiction to community or quasi-public trusts and not those that are strictly charitable.

<sup>35</sup> The Trustees have chosen not to name the beneficiaries identified in Sawridge #5 to avoid any stigma of illegitimacy for the person's male child.

The apparently established rules in the context of conditional gifts are quite complicated and somewhat obscure As stated in Lewin on Trusts, 19th ed. 2015 at 5-025 to 5-028 [TAB 25]

<sup>37</sup> Re Sprott Estate, 2011 NSSC 327, pages 14, 21-22, 30, 44-50 [TAB 26]

- This second position is further supported in the context of contracts affected by illegality. The applicable principle is known as the doctrine of severance. Where permitted, there are essentially two types: the blue pencil severance and notional severance. Blue pencil severance is described as "effected when the part severed can be removed by running a blue pencil through it "38 Conversely, notional severance is possible by "reading down" an illegal provision that would make the contract unenforceable, in order to make it legal and enforceable. 39
- It has been suggested that the Court could exercise its jurisdiction as outlined in *Re Sprott Estate* and add language to the trust, <sup>40</sup>. The Trustees do not believe this case, or cases that follow its authority, are applicable in situations like the amendment of the Definition, as they deal with the court's inherent jurisdiction with respect to charitable trusts and, in particular, with the exercise of a jurisdiction to make amendments by adding language regarding administrative terms only. The definition of beneficiaries and determining the beneficiaries is one of the three certainties of a trust. We submit that an amendment to a beneficiary definition cannot be an administrative term and thus the provisions of Re Sprott do not apply.

#### g. Voiding Trust

54. It has been suggested that the problems with determining beneficiaries coupled with the discrimination could lead to the result that the Trust is void because it is able to satisfy one of the three certainties. If the definition remains unchanged, it is possible the Trust will face a challenge to void the Trust which is certainly not in the best interests of the Trust and a possibility that the Trustees hope to avoid.

### h. Recent Bill C-31 Case Involving a Trust

55. The 2019 Federal Court Decision in Ginoogaming First Nation<sup>41</sup> deals with a trust in which there is discrimination against Bill C-31 women. The Court was asked to interpret the provisions of a trust and specifically not asked to amend the trust. The definition of beneficiaries in this trust specifically said it should distribute without discrimination. The Court found that in interpreting the definition of beneficiaries, which was equivalent to members of the First Nation, it could not consider amendments to legislation after the date of the trust deed in respect of interpreting the trust deed. Thus, the trust deed was interpreted using and enforcing the discriminatory provisions.

<sup>&</sup>lt;sup>38</sup> KRG Insurance Brokers (Western) Inc v Shafron, 2009 SCC 6 at para 29, citing Attwood v Lamont, [1920] 3 KB 571, [TAB 27]

TAB 27 at para 30 and Taylor v. Ginoogaming paragraph 32 and 33 at TAB 28 – both trust principles and contractual interpretation principles factor into how a court is to interpret a trust document.

<sup>40</sup> Re Sprott Estate at TAB 26

<sup>41</sup> Taylor et al v Ginoogaming First Nation, 2019 ONSC 0328 [TAB 28]

# TAB M

#### Clerk's Stamp:

COURT FILE NUMBER: 1103 14112

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

IN THE MATTER OF THE TRUSTEE ACT, R.S.A 2000, C. T-8, AS AMENDED, and

IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY CHIEF WALTER PATRICK

TWINN, OF THE SAWRIDGE INDIAN BAND, NO. 19, now known as SAWRIDGE FIRST NATION, ON APRIL 15, 1985 (the "1985 Sawridge")

APR 1 2 2019

Trust")

APPLICANTS ROLAND TWINN, MARGARET WARD, TRACEY SCARLETT,

EVERETT JUSTIN TWIN AND DAVID MAJESKI as Trustees for the

1985 Sawridge Trust;

DOCUMENT REPLY BRIEF OF THE OFFICE OF THE PUBLIC GUARDIAN

AND TRUSTEE ("OPGT")

JURISDICTION APPLICATION RETURNABLE APRIL 25, 2019

ADDRESS FOR Hutchison Law Field Law

SERVICES AND #190 Broadway Business Square 2500 - 10175 101 ST NW CONTACT 130 Broadway Boulevard Edmonton, AB T5J 0H3 INFORMATION OF Sherwood Park, AB T8H 2A3

PARTY FILING THIS

DOCUMENT

Attn: Janet L. Hutchison

Attn: P. Jonathan Faulds, Q.C.

Telephone: (780) 417-7871 Telephone: (780) 423-7625

Fax: (780) 417-7872 Fax: (780) 428-9329 File: 51433 JLH

Dentons LLP McLennan Ross LLP
2900 Manulife Place 600 McLennan Ross Building
10180 - 101 Street 12220 Stony Plain Road

Edmonton Alberta T5J 3V5 Edmonton, Alberta, T5N 3Y4

Attention: Doris Bonora and Michael Sestito Attention: Karen Platten, Q.C. and Crista

Osualdini

Solicitors for the Sawridge Trustees Solicitors for Catherine Twinn

- iv) Overt discrimination warranting judicial intervention on public policy grounds, at least in the testamentary context, can also stem from discriminatory conditions or restraints that serve to dictate whether or not a person retains or achieves beneficiary status. (Spence) Whether such restraints or conditions exist here, either expressly or implicitly, and if so whether the jurisdiction that applies in the testamentary context should be extended to a trust such as the 1985 Trust, would have to be the subject of a further determination by the Court.
- v) A definition that restricts beneficiaries to band members who meet the definition of band member under the *Indian Act* as of a specific date does not necessarily require the trustees to act in a discriminatory manner (*Taylor*).
- 78. The Trustees also invite the Court to find a new category of trusts: "community or quasi-public trusts". They suggest such trusts should be recognized as laying closer on a spectrum to charitable trusts than private family trusts, and thus more readily subject to public policy review. <sup>74</sup>
- 79. The OPGT notes that in Leonard Foundation Robins J.A. emphasized that though the subject trust in that case (again, a charitable purpose trust) may have been privately created it had a "public or, at the least, a quasi-public character". A final determination of the Trustees' argument that such a character exists with the 1985 Trust, and should be accepted as a reason for the Court to extend its public policy jurisdiction with respect to charitable purpose trusts to the 1985 Trust, is a matter to be decided in a future application.
- 80. The OPGT does note that important distinctions remain between the 1985 Trust and charitable purpose trusts. One distinction is that with charitable purpose trusts the beneficiary of the trust is some qualifying charitable purpose or object rather than specific individuals with a vested beneficial interests as is the case with the 1985 Trust. Intervention by the Court in a charitable purpose trust does not involve impact on vested individual interests as it would with the 1985 Trust, where the interests impacted include those

<sup>74</sup> See paragraph 35, Brief of the Trustees, filed March 29, 2019

<sup>&</sup>lt;sup>75</sup> Leonard Foundation case at para. 30 and 33 [Tab 16, Brief of the Sawridge Trustees, filed March 29, 2019]

represented by the OPGT.<sup>76</sup> Should the Court at some point decide intervention is merited, protection of vested interests in the 1985 Trust would continue to be a priority for the OPGT.

- 81. With respect to the "no-amendment" clause at paragraph 11 of the 1985 Trust, the OPGT does not see this as a bar to the Trustees' argument in favor of public policy review, nor for that matter to the Court's jurisdiction under s. 42 of the *Trustee Act*. On the other hand, the existence of such a clause may be pertinent to the Court's ultimate assessment of whether or how to exercise the jurisdiction it is found to have.
- F. What is the scope of any jurisdiction to amend the 1985 Trust? (Para. (b) of the Order).
- 82. While taking an expansive approach to the existence of public policy jurisdiction, the Trustees propose a very narrow approach to its scope, suggesting that it be limited to striking out language that gives rise to the discrimination in the 1985 Trust.
- 83. The OPGT feels obliged to point out this is a singularly result-oriented approach calculated to yield the Trustees' preferred amendment -- redefining the beneficiary class as "band members". The effect of this would be to extinguish the vested (and contingent) beneficial interests of many current beneficiaries including many of those represented by the OPGT. The OPGT is troubled that the Trustees should advocate an amendment with such adverse impact on the existing beneficiaries, to whom the Trustees fiduciary obligations are owed.
- 84. The OPGT sees no principled basis for this approach. If the Court were to extend public policy jurisdiction to allow review of the 1985 Trust, it follows that the remedies available on such review should also be extended.

<sup>&</sup>lt;sup>76</sup> Note, the OPGT submits the unworkability that the Trustee contends to exist with the current beneficiary definition (e.g. at paras, 25 and 26 of the Brief of the Trustees) to be an irrelevant consideration to any question of whether the beneficiary definition offends public policy. Moreover, it is a contention the OPGT would dispute were the matter at issue in the within application.

- 85. The OPGT submits that were the Court to decide to interfere with an existing beneficiary definition of the 1985 Trust on public policy grounds, the proper objective should be to ameliorate the discriminatory aspects of the existing definition found to be against public policy by preserving and protecting existing beneficial interests, while allowing, through the exercise of *cy-pres* scheme-making power, for those who had previously been discriminated against to be added. This was the net result in each of *Leonard Foundation* and *Dominion Students*<sup>77</sup> in the charitable purpose trust context.
- 86. In this regard, the OPGT also sees *Re Sprott Estate*, cited but sought to be distinguished by the Trustees, as an illustrative and informative canvassing of approaches taken to the amendment of trusts terms.<sup>78</sup>
- 87. In sum, the OPGT submits the Court is not, and cannot be, restricted in the means available to it to address discrimination which it finds warrants judicial intervention, but rather has available to it the full suite of *cy-pres* remedies. A remedy that would re-write the existing trust terms to address the discrimination, but result in a loss of beneficiary status for current or prospective beneficiaries under the existing trust terms, is clearly not the only remedy available to the Court.

#### PART V-SUMMARY

- 88. In summary, the OPGT submits:
  - a. No amendment to the beneficiary definition of the 1985 Trust is available under the terms of the Trust itself by virtue of the restriction in paragraph 11 thereof, provided that:
    - i. An amendment to eliminate that restriction could be pursued under s. 42 of the *Trustee Act* if the preconditions under s. 42 were satisfied; and
  - If the restriction were considered to be discriminatory or offensive to public policy the Court might also be asked to exercise public policy review

<sup>77</sup> Leonard Foundation case [Tab 16, Brief of the Sawridge Trustees, filed March 29, 2019]

<sup>78</sup> See paragraph 53, Brief of the Trustees, filed March 29, 2019

jurisdiction to remove it, although the extension of such jurisdiction specifically to the 1985 Trust is as yet undecided and its exercise discretionary.

- b. An amendment to directly vary the beneficiary definition might also be sought pursuant to s. 42 of the *Trustee Act* or on a public policy basis, subject to the same qualifications.
- c. The Court always has jurisdiction to vary a trust pursuant to s. 42 of the *Trustee Act* provided the statutory preconditions are satisfied. The OPGT invites the Court to provide direction to the Trustees that might assist in the pursuit of a s. 42 application.
- d. The Court's amendment power under s. 42 of the *Trustee Act*, and on a public policy basis if available, is fulsome and is not limited to deletions.
- e. In the exercise of any type of jurisdiction the Court may find available, the rights of existing beneficiaries are paramount and must be protected.

#### ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at the Hamlet of Sherwood Park, in the Province of Alberta, this 12th day of April, 2019.

HUTCHISON LAW

Per:

JANET L. HUTCHISON

Solicitors for the Office of the Public Guardian and Trustee of Alberta

FIELD LAW

Y. JONATHAN FAULDS, Q.C.

Solicitors for the Office of the Public Guardian and Trustee of Alberta

Estimation of time for Oral Argument: 45 minutes

#### ومنسو متخصصون بالجاري والمقاص والكسيم فالمستقيل فالمستوا فالمستوان والمرابي والمرابي والمنابي والمنابع والمنابع

# TAB N



doris.bonora@dentons.com D +1 780 423 7188 Oenlors Canada LLP 2500 Stantec Tower 10220 - 103 Avenue NW Edmonton, AB, Canada TSJ 0K4

dentons.com

October 15, 2019

File No.: 551860-1

**VIA EMAIL** 

McLennan Ross LLP 600, 12220 Stony Plain Road Edmonton AB T5N 3Y4

Attention: Crista Osualdini & Dave Risling

Dear Sir/Madam:

RE:

Sawridge Trust - Action 1103 14112
Viva Voce Evidence - Maurice Cullity

During the case management meeting held on September 4, 2019, you raised the possibility of having Mr. Cullity attend in court to provide *viva voce* evidence. We have had an opportunity to consider your request. Mr. Cullity's involvement with the transfer of assets from the 1982 Sawridge Trust to the 1985 Sawridge Trust was as a solicitor practicing at Davies Ward & Beck (as it was at the time). All of his work would be subject to solicitor-client privilege. The 1985 Trustees are not in a position to waive that privilege. Even if Mr. Cullity were compelled to provide testimony in court, the 1985 Trustees would object on the grounds of privilege.

We also understand that Mr. Cullity, through his firm, provided work for the Sawridge First Nation, who would be the holders of that privilege. We will let the Sawridge First Nation speak to their inclination to waive any privilege that they may bold.

Yours very ruly Dentons Canada LL

Dorls C.E. Bonora Partner

DCEB/sh

CC:

Hutchison Law (via email)

Attention: Janet Hutchison

CC:

Field Law (via email)

Attention: P. Jonathan Faulds

Cc: Parl

Parfee McLaws (via email)

Attention: Edward H. Moistad Attention: Ellery Sopko

CC:

Clients (via email)

Larrain Rencoret ► Hamilton Harrison & Mathews ► Mardemootoo Balgobin ► HPRP ► Zain & Co. ► Dalany Law ► Dinner Mertin Madiay Murray & Spens ► Gallo Barrios Pickmann ► Muñoz ► Cardenas & Cardenas ► Lopez Velarde ► Rodyk ► Boekel ► OPF Partners 42485111\_1[NATDOCS

COURT FILE NUMBER: 1103 14112

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE:

**EDMONTON** 

IN THE MATTER OF THE TRUSTEE ACT, RSA 2000, C. T-8, AS AMENDED, AND

IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN, OF THE SAWRIDGE INDIAN BAND, NO. 19 NOW KNOWN AS SAWRIDGE FIRST NATION ON APRIL 15, 1985 (THE "1985 SAWRIDGE TRUST")

APPLICANT:

SAWRIDGE FIRST NATION

**RESPONDENTS:** 

ROLAND TWINN, MARGARET WARD, TRACEY SCARLETT, EVERETT JUSTIN TWINN AND DAVID MAJESKI, AS TRUSTEES FOR THE 1985 SAWRIDGE TRUST, THE OFFICE OF THE PUBLIC GUARDIAN AND TRUSTEE OF ALBERTA, AND CATHERINE TWINN

Questioning on Affidavit of DARCY ALEXANDER TWINN, sworn September 24, 2019, taken at the offices of Parlee McLaws LLP, Barristers & Solicitors, 1700, 10175 - 101 Street, Edmonton, Alberta, at 10 a.m., on the 18th day of October, 2019

E. Molstad, Q.C. E. Sopko Parlee McLaws LLP 1700, 10175 - 101 Street NW Edmonton, Alberta T5J OH3 780.423.8500 For the Applicant

D. Bonora Dentons LLP 2500, 10220 - 103 Avenue NW Edmonton, Alberta T5J OK4 780.423.7100 For the Respondents Roland Twinn, Margaret Ward, Tracey Scarlett, Everett Justin Twinn and David Majeski, as Trustees for the 1985 Sawridge Trust

J. Hutchison Hutchison Law Unit #190, 130 Broadway Boulevard Sherwood Park, Alberta T8H 2A3 780.417.7871 For the Respondent Office of the Public Guardian and Trustee of Alberta

C. Twinn Twinn Law Box 1460 Slave Lake, Alberta TOG 2AO 780.886.2921 On Her Own Behalf

Shelley Becker, CSR(A)

Court Reporter

- 1 have all adopted these abbreviated ways of referring to
- 2 things in these proceedings. So if I refer to the
- 3 OPGT, will you understand I am referring to my client
- 4 the Office of the Public Guardian and Trustee of
- 5 Alberta?
- 6 A Okay. Yeah.
- 7 Q And if I refer to Sawridge, you will understand I am
- 8 referring to Sawridge First Nation?
- 9 A Yeah.
- 10 Q If I refer to the 1982 Trust, will you understand that
- 11 I am referring to the trust created by the trust deed,
- originally created by the trust deed that is at Exhibit
- 13 "A" of your Affidavit. And you might want to just take
- 14 a look at that.
- 15 A Yeah.
- 16 Q Okay. And if I refer to the 1985 Trust, you will
- 17 understand that I am referring to the Sawridge Band
- 18 inter vivos settlement created by a trustee that was
- 20 A Yeah.
- 21 Q If I do use any other terms that you don't understand
- and you need clarification, please just interrupt me
- 23 and ask.
- 24 A Yeah.
- 25 Q Thank you. Okay. Mr. Twin, your election to council
- in June -- or February or June of 2015, was that your
- 27 first term on council?

```
1
    Α
         Yes, it was.
 2
    Q
         Okay. And you have subsequently been re-elected; is
 3
         that correct? Or are you still in your first term?
         Yeah, this is my second. By acclamation.
 4
    Α
 5
         When was the second election?
    Q
         February of '19.
 6
    Α
 7
    Q
         Of 2019?
 8
    Α
         Yes.
9
         So it's a four-year term, then?
    Q
10
    A
         Yeah.
         And, Mr. Twin, is it your understanding that when
11
    Q
12
         you're elected to council in Sawridge, that's under
13
         section 74 to 80 of the Indian Act, or are you elected
         on some other basis?
14
15
         Well, we have our own elections act, constitution.
    A
16
         Okay. Now, Mr. Twin, I wanted to get a better
    Q
17
         understanding of if Sawridge's application to intervene
         is granted, who exactly Sawridge is planning to speak
18
         on behalf of. So is it to speak on behalf of chief and
19
20
         council of Sawridge?
21
    MR. MOLSTAD:
                                 That's a legal question.
    MS. HUTCHISON:
                                 I am asking for his
22
23
         understanding.
24
    MR. MOLSTAD:
                                 Well, it's still a legal
25
         question. If you would like to know who he will be
26
         speaking on behalf of, I can advise you of that.
27
    MS. HUTCHISON:
                                 Well, I would be happy to let
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1
         you put it on the record and we'll --
2
    MR. MOLSTAD:
                                 He'll be speaking on behalf of
 3
         chief and council and its representative members of the
4
         Sawridge First Nation.
5
    MS. HUTCHISON:
                                 Okav.
6
    Q
         MS. HUTCHISON:
                                 Now, Mr. Twin, when -- sorry,
7
         do you adopt that answer by your counsel?
8
    A
         Yes.
         When we talk about Sawridge representing the members of
9
   Q
10
         Sawridge First Nation, is that limited to the people
11
         that are actually on Sawridge's band membership list?
12
   A
         Yes.
         So it wouldn't include people that might be entitled to
13
   Q
14
         be on the list but are not currently on it?
    A
         No.
15
16
    Q
         Okay. Mr. Twin, did chief and council have a meeting
17
         to discuss bringing this intervention application, a
18
         chief and council meeting?
19
         The councillor and I did.
    A
20
         Gina Donald?
    Q
21
    A
         Yeah.
         Do you know approximately when that meeting occurred?
22
    Q
23
    Α
         I don't know exactly.
         Do you know if a BCR was passed authorizing chief and
24
    Q
25
         council to bring this intervention application?
26
    A
         No.
         You know it was not, or you don't know?
27
   Q
```

1 Α There is -- no. 2 There is no resolution? Q 3 There was no BCR. A 4 Okay. I will ask you to undertake to provide us a copy 5 of the band council minutes where the intervention 6 application was discussed. 7 MR. MOLSTAD: No. MS. HUTCHISON: 8 And the basis for your refusal, 9 Mr. Molstad? 10 MR. MOLSTAD: Sure. The application, the Affidavit, and the brief in relation to our motion to 11 12 intervene in this matter was served on September 26th, 2019. On September 30th, 2019, the Public Trustee 13 advised that they will be questioning on Darcy Twin's 14 Affidavit. On October 7th, 2019, Ms. Twinn's counsel 15 advised that they intended to examine Mr. Twin and that 16 they were available for the 18th of October and 17 requested at that time that we start at 10 o'clock in 18 19 the morning, which we agreed to. This questioning today is pursuant to Rule 6.7 of 20 21 the Rules of Court, which means that the Rule 6.16 to 6.20 apply. A notice requesting questioning provides 22 23 in mandatory language that you must describe any records the person is required to bring for 24 25 questioning. The parties who wish to question had more than sufficient time to consider this and have provided 26 27 no request to our offices or to Mr. Twin, this witness,

1 to bring any records for questioning. So we will not 2 enter into any undertakings to produce records. 3 MS. HUTCHISON: Thank you for putting your 4 position on the record, Mr. Molstad. UNDERTAKING NO. 1 (REFUSED) 5 PRODUCE COPY OF SAWRIDGE BAND COUNCIL MINUTES WHERE 6 7 THE INTERVENTION APPLICATION WAS DISCUSSED 8 MS. HUTCHISON: Mr. Twin, did chief and council Q 9 hold a Sawridge members meeting to discuss with 10 Sawridge members directly the intervention application? No. 11 A 12 Q Mr. Twin, in paragraph 1 of your Affidavit, you state 13 that I am a beneficiary of the 1982 Trust. And you also have a statement in paragraph 5 and 6 of your 14 15 Affidavit that refer to the 1982 trustees being chief and council, including yourself. How did it come to 16 17 your attention that you were a 1982 trustee, Mr. Twin? I just knew about the '82 trust and that chief and 18 Α 19 council was the trustees of the '82 trust. And when was that? 20 Q 21 A long time ago. I knew through -- I guess through my A 22 dad. 23 So it's your evidence that as of the date of your first Q election to council in June of 2015, you understood 24 that you were also a 1982 trustee? 25 26 Α Yeah. How many 1982 trustee meetings have you attended? 27 Q

That the '82 trust was transferred into the '85 Trust 1 Α 2 before the Bill C-31 took place, is my understanding. 3 Mr. Twin, I am showing you --Q 4 MS. HUTCHISON: I forgot to ask to mark that as 5 an exhibit for identification. I apologize. Two 6 documents --7 MR. MOLSTAD: Let's just go one at a time. 8 EXHIBIT A: (FOR IDENTIFICATION) TRUST DEED DATED JULY 5, 1983 9 10 MR. MOLSTAD: Why don't we find out if the witness has seen these documents before --11 12 MS. HUTCHISON: Yes, that was where I was going 13 to start. MR. MOLSTAD: Before he reads through them. 14 MS. HUTCHISON: 15 Yes. Q MS. HUTCHISON: Mr. Twin, have you seen either 16 of these documents before? 17 No. I haven't. 18 Α Was the existence of these documents discussed with you 19 Q 20 before you swore your Affidavit? 21 MR. MOLSTAD: Objection. It's not a proper 22 question. 23 Q MS. HUTCHISON: Mr. Twin, throughout your Affidavit, you refer to the information you received 24 from your counsel Edward Molstad. Did Edward Molstad 25 discuss these documents with you in the course of your 26 27 preparing the Affidavit?

1	MR.	MOLSTAD: Objection. That's not a proper
2		question. The information that he received from me is
3		specifically described in his Affidavit, and you may
4		ask him questions about that.
5	MS.	HUTCHISON: Let's mark these as Exhibit B
6		and C for Identification, please.
7		EXHIBIT B: (FOR IDENTIFICATION)
8		TRUST DEED DATED APRIL 16, 1985
9		EXHIBIT C: (FOR IDENTIFICATION)
10		RESOLUTION OF TRUSTEES DATED APRIL 15, 1985
11	Q	MS. HUTCHISON: Mr. Twin, can I just ask you to
12		flip to the signature pages. So first we will look at
13		Exhibit B, and the signature page is page 2.
14	MR.	MOLSTAD: She is talking about Exhibit B
15		for Identification; I believe. Is that correct?
16	Q	MS. HUTCHISON: Exhibit B for Identification,
17		correct.
18	Α	Okay.
19	Q	If you just flip to the second page. And am I correct
20		in my understanding, Mr. Twin, that at the time that
21		this document was executed in 1985 Walter Twinn was
22		chief of Sawridge?
23	A	Yes.
24	Q	And if you go back to the first page of that document
25		where it refers to the old trustees and the new
26		trustees as Walter Patrick Twinn, Sam Twin and George
27		Twin, am I correct in understanding that those three

1		individuals were the only members of Sawridge chief and
2		council at that time?
3	A	I believe so, yes.
4	Q	Okay. I f you have any information or learn of any
5		information to the contrary, Mr. Twin, will you advise
6		me?
7	MR.	MOLSTAD: No. That's his information.
8	MS.	HUTCHISON: You won't grant that
9		undertaking, Mr. Molstad?
10	MR.	MOLSTAD: No.
11	MS.	HUTCHISON: Okay.
12		UNDERTAKING NO. 2 (REFUSED)
13		ADVISE IF DARCY TWIN HAS ANY INFORMATION OR LEARNS
14		OF ANY INFORMATION TO THE CONTRARY THAT WALTER
15		PATRICK TWINN, SAM TWIN AND GEORGE TWIN WERE THE
16		ONLY MEMBERS OF SAWRIDGE CHIEF AND COUNCIL AT THE
17		TIME EXHIBIT B FOR IDENTIFICATION WAS EXECUTED IN
18		APRIL OF 1985
19	Q	MS. HUTCHISON: And, Mr. Twin, have you seen or
20		are you aware of any documents other than Exhibit B and
21		Exhibit C for Identification, and other than anything
22		attached to your Affidavit, that sets out the decision
23		of the 1982 and 1985 trustees to conduct the asset
24		transfer in 1985? Have you ever seen anything else?
25	Α	No.
26	Q	And so, Mr. Twin, you haven't seen a band council
27		resolution that authorized Walter Twinn to establish

```
1
         the 1985 Trust?
         If it's not in here, then no.
 2
    Α
 3
         Did you attempt to look for any documents of that
    Q
 4
         nature in preparation for your Affidavit, to prepare
 5
         that evidence?
6
   A
         No.
7
         No? So you don't know if that exists or not?
   Q
 8
    A
         No.
         Do you know if Sawridge retains its band council
   Q
         resolutions back to 1985?
10
11
         I don't know.
    A
12 Q
         Do you have any understanding of what Sawridge's filing
         system is for band council resolutions?
13
         No, I don't know. That's office stuff.
14
   A
15
   Q
         Mr. Twin, can I just get you to take a look at that
         document that is a Sawridge Band Resolution dated
16
         April 15th, 1985. Just let me know when you have had a
17
         chance to look at it.
18
19 A
         Okay.
         Were you made aware of -- sorry, have you seen that
20 Q
21
         document before?
22
   A
        No.
23
         And so prior to swearing your Affidavit, you weren't
24
         aware that that document existed?
25
   A
         No.
26
   Q
        Okay.
    MS. HUTCHISON:
                                Can we mark that as Exhibit D
27
```

- 1 Affidavit.
- 2 Q I understand he had nothing to do with your Affidavit.
- 3 Do you understand that Sawridge is bringing an
- 4 application to intervene in a larger court proceeding?
- 5 A Yes.
- 6 Q Is Mr. Twinn abstaining from involvement in anything to
- 7 do with the larger court proceeding?
- 8 A As what?
- 9 Q Well. as --
- 10 A As chief or as trustee?
- 11 Q As anything. Is he abstaining from involvement?
- 12 A As chief he has nothing to do with this. That's all I
- 13 know.
- 14 Q When you say this, you mean this intervention
- 15 application?
- 16 A This intervention.
- 17 Q So you are not aware of any other --
- 18 A Anything else I don't know.
- 19 Q You don't know?
- 20 A Yeah, I don't know.
- 21 Q Prior to the date on which Mr. Roland Twinn decided to
- 22 abstain from involvement in this intervention
- application, do you know if he, as chief, brought
- forward the concept of an intervention application at
- 25 any --
- 26 A No.
- 27 Q No? So at anytime from 2011 until September of 2019?

```
1
    A
         No. We don't discuss anything about the trusts.
2
         That's a separate entity. We are council of the first
3
         nation. We deal with first nation business. Trust
4
         business is trust business. He takes that elsewhere.
5
         Well, with respect, Mr. Twin, at some point at chief
    Q
6
         and council meetings there must have been something to
7
         indicate Roland Twinn is abstaining from involvement in
8
         this intervention application, correct?
9
         Not in a duly convened meeting. Just he didn't have
    A
10
         anything to do with it. He abstained.
11
    Q
         So in the chief and council meetings for Sawridge that
         you have been involved in since your election in 2015,
12
13
         your evidence is that there has never been a discussion
14
         at a chief and council meeting about whether Sawridge
15
         should become involved in this larger court action
16
         prior to the intervention application in September?
17
    A
         No.
18
    Q
         That's not your evidence?
19
    A
         I got from him, from our lawyer.
20
    Q
         What did you get?
21
    A
         We got news from him and this is where Gina and I
22
         discussed it and decided to intervene. He saw it best
23
         fit to intervene. We took his advice, we intervened.
24
    MS. HUTCHISON:
                                 Shelley, can I just get you to
25
         read back my first question.
    COURT REPORTER:
26
                          (By Reading)
27
                  So in the chief and council meetings for
```

```
1
                  Sawridge that you have been involved in since
 2
                  your election in 2015, your evidence is that
 3
                  there has never been a discussion at a chief
                  and council meeting about whether Sawridge
5
                  should become involved in this larger court
6
                  action prior to the intervention application
7
                  in September?
8
    MR. MOLSTAD:
                                 And let me just go on the
9
         record here, I am assuming that that question relates
         to the application to intervene because if it
10
11
         doesn't --
    MS. HUTCHISON:
                                 Absolutely.
12
13
    MR. MOLSTAD:
                                 All right.
    MS. HUTCHISON:
                                 Sawridge's delay in bringing
14
15
         this application is extremely relevant.
16
    MR. MOLSTAD:
                                 So you are asking him in
         relation to the application to intervene? That's the
17
18
         question that --
         MS. HUTCHISON:
                                 I am asking him if Sawridge
19
    Q
20
         chief and council, in any meeting that he has been in
         since his election, have discussed the concept of
21
22
         intervening in this larger court action?
         Not a duly convened chief and council meeting, no.
23
    A
24
    Q
         Okay. Have you had that discussion in any other kind
         of meeting amongst chief and council since you were
25
26
         elected in 2015?
    MR. MOLSTAD:
                                 I am assuming before he decided
27
```

1

in this case.

2 MS. HUTCHISON: I was quite clear about that, 3 yes. Well, yeah, our -- Mike and Gina and I got the advice 4 Α from Mr. Molstad and we decided from there. 5 6 Q MS. HUTCHISON: And so right now you are 7 talking about the decision that led to the September 8 2019 application? 9 Α Yes. 10 Q I am talking about any discussion prior to September of 2019. 11 12 Α Was there a discussion, no. So there is no discussion that you participated in --13 Q MR. MOLSTAD: This is not relevant. We 14 15 object. This is not relevant questioning. All right, Okay. MS. HUTCHISON: 16 MR. MOLSTAD: It has nothing to do with the 17 application or the Affidavit. 18 19 MS. HUTCHISON: Well, we disagree on that, Mr. Molstad. But I think Mr. Twin has made it clear he 20 21 has no other information, so, 22 Q MS. HUTCHISON: Mr. Twin, could I ask you to 23 flip to your paragraph 7, please. So as I understand the events that you are referring to in paragraph 7(a) 24 25 through (f) of your Affidavit, you are talking about 26 events that occurred between roughly 1966 and the 27 April 15th, 1985 establishment of the 1985 Trust; is

- 1 A Yes.
- 2 Q Did he also tell you anything about the transcript?
- 3 A No, I just read through it and -.
- 4 Q So in paragraph 7, when you say I am informed by our
- 5 counsel Edward H. Molstad, QC, the only information you
- 6 are referring to is Mr. Molstad handing you a copy of
- 7 the transcript at Exhibit "B" of your Affidavit?
- 8 A Yeah, he handed it to me, yeah. I read through it.
- 9 Q And he didn't give you any other information about it;
- 10 is that correct?
- 11 A No.
- 12 Q Turn to your paragraph 8 and your Exhibit "C",
- 13 Mr. Twin. Do you need a second to take a look at
- 14 Exhibit "C"? Just let me know when you have had a
- 15 chance to read Exhibit "C", Mr. Twin.
- 16 A Okay, give me a minute. Okay.
- 17 Q Mr. Twin, had you seen that letter before you swore
- 18 this Affidavit?
- 19 A No.
- 20 Q Would you agree with me that that letter is indicating
- 21 that INAC would like to meet with Sawridge about the
- 22 trusts? And I am looking at the second-last paragraph
- of the letter.
- 24 A Yeah.
- 25 Q Do you know if those meetings occurred?
- 26 A I don't know.
- 27 Q Do you have any information about how INAC's concerns

1 were resolved or how Sawridge addressed them? 2 I don't know. A 3 Q You have no knowledge? 4 A No. 5 Q And you didn't take any steps to independently look 6 into that question before you swore your Affidavit? No. 7 A Am I correct at least in understanding, Mr. Twin, that 8 9 INAC has not taken any steps to try and stop the operation of Sawridge trusts? 10 Yeah, I don't think so. I don't know, though. I don't 11 A 12 think so. 13 Q You are not aware of anything? Yeah, not aware. 14 A 15 Q I would like you to turn to paragraph 9 and 10 of your 16 Affidavit, Mr. Twin. I don't think you will need to go 17 to your Exhibit "D", but you can certainly take a minute to take a look at it if that's useful. 18 Yeah. 19 20 Q Is there any part of your evidence in paragraph 9 and 21 10 that is based on your own personal knowledge as 22 opposed to information given to you by your counsel? 23 No. It's what I've read. Α 24 Q Is there anything that Mr. Molstad informed you about 25 in relation to the August 26th, 2014 consent order that 26 you have not included in these two paragraphs?

### **Swann Hallberg & Associates**

27

A

No.

1	Q	Were you made aware pric	or to executing this Affidavit,
2		Mr. Twin, that Sawridge	First Nation, through its
3		counsel Parlee McLaws, w	was involved in the discussions
4		leading up to the August	24th, 2016 consent order?
5	Α	Can you repeat the quest	ion? Sorry.
6	MS.	HUTCHISON:	Can you read it back for him.
7		Thanks.	
8	COUR	T REPORTER: (By Re	eading)
9		Q Were you made a	aware prior to executing this
10		Affidavit, Mr.	Twin, that Sawridge First
11		Nation, through	n its counsel Parlee McLaws, was
12		involved in the	e discussions leading up to the
13		August 24th, 20	016 consent order?
14	Α	Yeah, I don't think they	were that I'm aware of.
15	Q	MS. HUTCHISON:	Okay. I am going to show you
16		three pieces of correspo	ondence, Mr. Twin.
17	MR.	MOLSTAD:	Just bear with us for a moment
18		here.	
19	Q	MS. HUTCHISON:	Just let me know when you have
20		had a chance to look at	those three items, Mr. Twin.
21	MR.	MOLSTAD:	And I'll let you know when I
22		have too.	
23	MS.	HUTCHISON:	Great. Thank you, Ed.
24	MR.	MOLSTAD:	Why don't we shorten this and
25		just ask the witness if	he has ever seen these
26		documents before.	
27	MS.	HUTCHISON:	Yes, we'll get there, Ed, but

1 filed in this proceeding. It's called a litigation 2 plan. 3 (DISCUSSION OFF THE RECORD) 4 (ADJOURNMENT) MS. HUTCHISON: Do you acknowledge you are 5 still under oath? 6 Thank you. Mr. Twin, I omitted to ask Madam Reporter 7 Α to mark the July 6, 2016 letter as the next exhibit for 8 identification. So we will just do that. And we were 9 10 looking at a litigation plan that --11 MR. MOLSTAD: Sorry, which exhibit? MS. HUTCHISON: That will be Exhibit G. 12 13 EXHIBIT G: (FOR IDENTIFICATION) 14 LETTER DATED JULY 6, 2016 FROM EDWARD MOLSTAD QC TO 15 JANET HUTCHISON MS. HUTCHISON: And then we were looking at a 16 Q 17 January 16th, 2019 litigation plan, Mr. Twin. Have you seen that document before? 18 19 No. We will just mark that as an MS. HUTCHISON: 20 Exhibit H for Identification, please. 21 22 EXHIBIT H: (FOR IDENTIFICATION) 23 JANUARY 16, 2019 LITIGATION PLAN MS. HUTCHISON: I take it, then -- well, I 24 Ω won't assume, Mr. Twin. So before you swore your 25 Affidavit, had you been made aware that Sawridge had an 26 opportunity to file an application to participate in 27

- 1 the 2018 jurisdiction application by January 31st,
- 2 2019?
- 3 A No.
- 4 Q You hadn't been made aware of that?
- 5 A No.
- 6 Q And do you recall chief and council discussing whether
- 7 or not Sawridge should bring that application?
- 8 A No.
- 9 Q So nothing in late 2018?
- 10 A We don't discuss anything about trusts, like I said.
- 11 Q Okay. Turning to your Affidavit, Mr. Twin, paragraph
- 12 15. What is the source of your information for the
- 13 statements at paragraph 15, Mr. Twin?
- 14 A Okay. Repeat the question, sorry.
- 15 Q What is the source of your information for the evidence
- 16 you are giving at paragraph 15?
- 17 A The Exhibit "A", I believe.
- 18 Q So the 1982 trust declaration?
- 19 A Yeah, the declaration of trust, 1982 trust.
- 20 Q Mr. Twin, we have already established you don't have a
- 21 law degree, and I just want to confirm, you are not
- 22 suggesting that you are qualified to interpret sections
- of the *Indian Act* any more than you are qualified to
- interpret a trust declaration; is that fair?
- 25 A I understand it somewhat, I guess.
- 26 Q Okay.
- 27 A 64 and 66, I think, is basically saying you can use

1 monies for the band members, for --2 When the original release of capital and revenue funds Q 3 is approved by the Minister? Yeah. 4 Α 5 Yes. Your statements in paragraph 15 also seem to be 6 presuming that the 1982 Trust still exists, Mr. Twin. 7 And you are not qualified to give a legal opinion on 8 that either, are you? 9 Α I don't -- not a legal. 10 Q In the course of the questioning today, Mr. Twin, there have been quite a number of documents that you hadn't 11 12 seen before you prepared your Affidavit and before you attended today. So I just need to confirm a few things 13 14 with you. 15 When you were preparing your evidence about 16 Sawridge's unique perspective and how you, as a nation, would be specially affected, did you, independent of 17 18 your lawyers, review the files of Sawridge's legal and 19 accounting advisors from the 1980s, at least up to the 20 date of the '85 transfer in April? 21 Not on my own. Α 22 Q Not on your own. Did you review Sawridge's own files 23 regarding the creation of the '82 and '85 Trust? 24 Α No.

### **Swann Hallberg & Associates**

Did you discuss the asset transfer or the consent order

Regarding the asset transfer?

25

26

27

Q

Α

Q

No.

```
1
         with anyone other than the lawyers at Parlee?
2
    A
         No.
         Did you make any efforts independent of Mr. Molstad and
3
         Parlee to assure yourself the contents of your
4
5
         Affidavit were complete?
         I read through it and I swore an oath to my Affidavit,
6
    A
7
         yeah.
         You didn't review any documents outside of the
8
    Q
9
         documents your counsel gave you?
         No.
10
   A
         Now, Mr. Twin, so I understand if Sawridge was granted
11
   Q
12
         intervention status in the application, is it your
         understanding that Sawridge would cooperate with the
13
         existing parties to this proceeding to produce relevant
14
15
         and material documents, at least regarding the 1982
         Trust and the asset transfer?
16
                                 Don't answer that question.
17
    MR, MOLSTAD:
    MS. HUTCHISON:
                                 Why not?
18
19
    MR. MOLSTAD:
                                 It's not relevant and it's not
20
         within the scope of this documentation.
                                 So you are refusing to allow
21
    MS. HUTCHISON:
         this witness to answer whether or not Sawridge would
22
         cooperate on production of relevant evidence if they
23
24
         were granted intervention status?
                                 In terms of the application to
    MR. MOLSTAD:
25
26
         intervene, we are. It's our information that the
         Sawridge trustees provided, after receiving the
27
```

1		documentation from the Sawridge First Nation, all the
2		documents that they had available to them in relation
3		to the transfer, from the '82 to the '85 Trust.
4		OBJECTION NO. 3
5		TO QUESTION AS TO WHETHER IF SAWRIDGE WAS GRANTED
6		INTERVENTION STATUS IN THE APPLICATION, IT IS DARCY
7		TWIN'S UNDERSTANDING THAT SAWRIDGE WOULD COOPERATE
8		WITH THE EXISTING PARTIES TO THIS PROCEEDING TO
9		PRODUCE RELEVANT AND MATERIAL DOCUMENTS, AT LEAST
10		REGARDING THE 1982 TRUST AND THE ASSET TRANSFER
11	Q	MS. HUTCHISON: Do you adopt the evidence your
12		counsel has given on your behalf, Mr. Twin?
13	Α	Yeah.
14	Q	Now, I am providing this document really just because
15		it focuses a question I was going to ask in any event.
16		And we don't need to mark this. But we all got a copy
17		of Shelby Twinn's application to intervene the other
18		day. And one of the grounds that she refers to have
19		you seen that document, Mr. Twin?
20	Α	No.
21	Q	Oh, you haven't. Okay. Were you aware of the fact
22		that she was also applying to intervene?
23	Α	No.
24	Q	I see. Well, I am just giving you this as a source of
25		reference. Ms. Twinn suggests
26	MR.	MOLSTAD: Can you help us in terms of the
7		relevance of this?

1	MS.	HUTCHISON: I sure will, Mr. Molstad. I'm
2		about to get there.
3	Q	MS. HUTCHISON: Ms. Twinn raises in paragraph
4		10 of her application, her allegation anyway, that the
5		Sawridge trustees have historically provided full
6		indemnity funding to the Sawridge First Nation for
7		their participation in this action. In your role,
8		Mr. Twin, as a councillor of Sawridge First Nation, ar
9		you aware of Sawridge receiving payment or indemnity
10		funding from the 1985 Trust for any participation in
11		this proceeding?
12	MR.	MOLSTAD: Don't answer this question.
13		It's not relevant.
14	MS.	HUTCHISON: On what grounds?
15	MR.	MOLSTAD: It's not relevant and it's not
16		related to the scope of this application.
17		OBJECTION NO. 4
18		TO QUESTION AS TO WHETHER IN DARCY TWIN'S ROLE AS
19		COUNCILLOR OF SAWRIDGE FIRST NATION, HE IS AWARE O
20		SAWRIDGE RECEIVING PAYMENT OR INDEMNITY FUNDING
21		FROM THE 1985 TRUST FOR ANY PARTICIPATION IN THIS
22		PROCEEDING
23	Q	MS. HUTCHISON: I am still going to put my
24		questions on the record. Are you aware of the total
25		amount that Sawridge has received to date, Mr. Twin?
26	MR.	MOLSTAD: Don't answer that question.
27		It's irrelevant and, you know, my position is that

- 1 Q And just so everyone knows, and especially you, I am
- 2 not going to be asking you many questions today.
- 3 A Okay.
- 4 Q Janet, Ms. Hutchison, has asked most of the questions
- 5 that I had.
- 6 A Okay.
- 7 Q And so you will be on your way very soon.
- 8 A Okay.
- 9 Q Okay?
- 10 A Yeah.
- 11 Q Now, I do want to ask a few questions, though, about
- 12 who the chief and council are representing in this
- 13 intervention.
- 14 A Okay.
- 15 Q You mentioned that you are representing the members?
- 16 A The members, yes.
- 17 Q That's right?
- 18 A Of the First Nation.
- 19 Q Does that include William McDonald?
- 20 A No.
- 21 Q And who is William?
- 22 A My brother.
- 23 Q Your brother?
- 24 A Yeah. Half brother.
- 25 Q And how is he your half brother?
- 26 A My dad's son.
- 27 Q And is he older or younger than you?

```
1
    Α
          Older, yeah.
2
    Q
          Do you know how much older?
3
    Α
          Not exactly, no.
4
          But he was born before you?
    Q
5
    Α
          Yeah.
6
          And your date of birth is?
    Q
7
    Α
          '77.
          '77?
8
    Q
9
          August 9th, yeah.
    Α
10
          August 9, 1977?
    Q
11
    Α
         Yeah.
          And does your representation include Anna Marie
12
    Q
13
          McDonald?
14
    Α
          No.
15
    MR. MOLSTAD:
                                  Objection. Just a minute here.
16
          I don't want to interfere unduly with your questioning
          of this witness, but you are now embarking upon
17
          questions related to membership. And what the witness
18
          has testified is that he speaks on behalf, and he and
19
20
          his co-councillors speak on behalf of the members of
          the Sawridge First Nation. Counsel in these
21
22
          proceedings have been specifically directed not to
23
          engage in questioning with respect to membership as it
24
          relates to the Sawridge First Nation. So I would ask
25
          that you keep that in mind.
26
    MS. TWINN:
                                  Thank you very much,
         Mr. Molstad, but I am just exploring, as I'm entitled
27
```

1		to, who the representat	ion includes.
2	Q	MS. TWINN:	And would it include Michelle
3		Ward?	
4	A	No.	
5	Q	And do you know who Mich	nelle Ward is?
6	A	No.	
7	Q	She was on the band lis	t.)
8	MR.	MOLSTAD:	Well, you are now embarking
9		upon questions related	to membership. And if I could
10		take you to Mr. Justice	Thomas's Order in that respect.
11	MS.	TWINN:	I don't think that's necessary, $% \left( 1\right) =\left( 1\right) \left( 1\right) $
12		Mr. Molstad, but thank y	you for your intervention.
13	MR.	MOLSTAD:	If you would like a list of the
14		members, we'll provide	you with a list of the members.
15	MS.	TWINN:	Sure. Then let's have that.
16	MR.	MOLSTAD:	Well, it wasn't asked for.
17	MS.	TWINN:	Well, you are offering it, so
18		I'll accept your offer,	kindly.
19	MR.	MOLSTAD:	Well, we'll have to provide
20		that to you, subject to	my client and the privacy
21		rights of those members	
22	MS.	TWINN:	So what does that mean, then?
23	MR.	MOLSTAD:	Well, I'd have to consult with
24		my client. There may be	e some privacy issues in terms
25		of the members.	
26	MS.	TWINN:	Okay.
27	MR.	MOLSTAD:	What I can tell you is that he

- 1 represents those who are recognized as members of the
- 2 First Nation.
- 3 Q MS. TWINN: Now, I take it, then, Darcy,
- 4 that you do not represent Shelby Twinn? I'm sorry, I
- 5 didn't hear.
- 6 A No.
- 7 Q No?
- 8 A No.
- 9 Q Okay. And I take it you do not represent the Frank
- 10 Joseph Ward family?
- 11 A No.
- 12 Q Now, I wanted to say to you today that, you know, when
- a lawyer has themself as a client, they say that they
- 14 have a fool for a client. You have heard that
- 15 expression?
- 16 A No.
- 17 Q But the reason I am self-representing today is that I
- 18 cannot afford to pay for lawyers to conduct this
- 19 cross-examination.
- 20 A Yes.
- 21 Q And I appreciate that it's perhaps awkward because you
- 22 and I are related, correct?
- 23 A Yeah.
- 24 Q And the people that I've asked you about, many of them
- 25 are family members to both of us, correct?
- 26 A Yes.
- 27 Q And I appreciate that the trustees are -- their legal

# TAB P



# DECLARATION OF TRUST SAURIDGE BAND TRUST

This Declaration of Trust made the 5th day of July 1983.

BETWEEN:

CHIEF WALTER PATRICK TWINN of the Sauridge Indian Rand, No. 19, Slave Lake, Alberta

(hereinafter called the "Settlor")

Of the First Part

AND:

1

CHIEF WALTER PATRICK TWINN WALTER FELIX TWINN and GEORGE TWINN Chief and Councillors of the Sauridge Indian Band, No. 150, G & H respectively

(hereinafter collectively called the "Trustees")

Of the Second Parc

#### AND WITHESSES THAT:

Whereas the Settler is Chief of the Sauridge Indian Band No. 19, and in that capacity has taken title to certain properties on trust for the present and future members of the Sauridge Indian Band No. 19 (herein called the "Band"); and,

Whereas it is desirable to provide greater detail for both the terms of the trust and the administration thereof; and,

Whereas it is likely that further assets will be acquired on trust for the present and future members of the Band, and it is desirable that the same trust apply to all such assets;

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NOW, therefore, in consideration of the premises and mutual promises contained herein, the Settlor and each of the Trustees do hereby covenant and agree as follows:

- 1. The Settlor and Trustees hereby establish a Trust Fund, which the Trustees shall administer in accordance with the terms of this Agreement.
- 2. Wherever the term "Trust Fund" is used in this Agreement, it shall mean:
  - (a) the property or sums of money paid, transferred or conveyed to the Trustees or otherwise acquired by the Trustees including properties substituted therefore, and
  - (b) all income received and capital gains made thereon, less,
  - (c) all expenses incurred and capital losses sustained chereon and less,
  - (d) distributions properly made therefrom by the Trustees.
- 3. The Trustees shall hold the Trust Fund in trust and shall deal with it in accordance with the terms and conditions of this Agreement. No part of the Trust Fund shall be used for or diverted to purposes other than those purposes set out herein.
- 4. The name of the Trust Fund shall be "The Sawridge Band Trust", and the meetings of the Trustees shall take place at the Sawridge Band Administration Office located on the Sawridge Band Reserve.
- 5. The Trustees of the Trust Fund shall be the Chief and Councillors of the Bend on the effective date of this Agreement (as duly elected pursuant to Sections 74 through 80 inclusive of the Indian Act, R.S.C. 1970, c. 1-6 as amended from time to time). The Chief shall serve a term of Six (6) years as Trustees.

One Councillor (to be determined by a majority of the Three Trustees) shall serve Four (4) years as Trustee. The other Councilior shall serve a term of Two (2) years as Trustee. Upon completion of their respective terms as Trustees, the Trustees shall resign as Trustee. If the Trustee whose term has ended was Chief when appointed Trustee, he shall automatically be replaced as Trustee by the new Chief for a term of Six (6) years. If the Trustee whose term has ended was a Councillor, he shall be replaced as Trustee by one of the new Councillors (to be determined by a majority of the Chief and Councillors at that time). In the event that an elected Chief or Councillor refuses to accept the terms of this trust and to act as a Trustee hereunder, the remaining Trustees shall appoint a person registered under the Indian Act as a replacement for the said recusant Chief or Councillor, which replacement shall serve for the remainder of the term of the recusant Chief or Councillors. In the event that the number of elected Councillors is increased, the number of Trustees shall also be increased. In the event that there are no Trustees able to act, any person interested in the Trust may apply to a Judge of the Court of Queen's Bench of Alberta who is hereby empowered to appoint one or more Trustees, who shall be a member of the Band.

6. The Trustees shall hold the Trust Fund for the benefit of all members, present and future, of the Band; provided, however, that at the end of Twenty One (21) years after the death of the last descendant now living of the original signators of Treaty Number 8 who at the date hereof are registered Indians, all of the Trust fund then remaining in the hands of the Trustees shall be divided equally among all members of the Band then living.

Provided, however, that the Trustees shall be specifically entitled not to grant any benefit during the duration of the Trust or at the end thereof to any illegitimate children of Indian women, even though that child or those children may be registered under the Indian Act and their status may not have been protested under Section 12(2) thereunder; and provided further that the Trustees shall exclude any nember of the Band who transfers to another Indian Band, or has become enfranchised (within the meaning of these terms in the Indian Act).

The Trustees shall have complete and unfettered discretion to pay or apply all or so much of the net income of the Trust Fund, if any, or to accumulate the same or any portion thereof, and all or so much of the capital of the Trust Fund as they in their unfettered discretion from time to time deen appropriate for the beneficiaries set out above; and the Trustees may make such payments at such time, and from time to time, and in such manner as the Trustees in their uncontrolled discretion deem appropriate.

- 7. The Trustees may invest and reinvest all or any part of the Trust Fund in any investment authorized for Trustees' investments by the Trustees' Act, being Chapter 373 of the Revised Statutes of Alberta, 1970, as amended from time to time, but the Trustees are not restricted to such Trustee Investments but may invest in any investment which they in their uncontrolled discretion think fit, and are further not bound to make any investment nor to accumulate the income of the Trust Fund, and may instead, if they in their uncontrolled discretion from time to time deem it appropriate, and for such period or periods of time as they see fit, keep the Trust Fund or any part of it deposited in a bank to which the Bank Act or the Quebec Savings Bank Act applies.
- 8. The Trustees are authorized and empowered to do all acts necessary or desicable to give effect to the trust purposes set out above, and to discharge their obligations thereunder other than acts done or omitted to be done by them in bad faith or in gross negligence, including, without limiting the generality of the foregoing, the power
  - (a) to exercise all voting and other rights in respect of any stocks, bonds, property or other investments of the Trust Fund;
  - (b) to sell or otherwise dispose of any property held by them in the Trust Fund and to acquire other property in substitution therefore; and

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- (c) to employ professional advisors and agents and to retain and act upon the advised given by such professionals and to pay such professionals such fees or other remuneration as the Trustees in their uncontrolled discretion from time to time deem appropriate (and this provision shall apply to the payment of professional fees to any Trustee who renders professional services to the Trustees).
- 9. Administration costs and expenses of or in connection with the Trust shall be paid from the Trust Fund, including, without limiting the generality of the foregoing, reasonable reimbursement to the Trustees or any of them for costs (and reasonable fees for their services as Trustees) incurred in the administration of the Trust and for taxes of any nature whatsoever which may be levied or assessed by Federal, Provincial or other governmental authority upon or in respect of the income or capital of the Trust Fund.
- 10. The Trustees shall keep accounts in an acceptable manner of all receipts, disbutsements, investments, and other cransactions in the administration of the Trust.

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- il. The Trustees shalementumban blankot, any act or onission done or made in the exercise of any power, authority or discretion given to them by this Agreement provided such act or omission is done or made in good faith; nor shall they be liable to make good any loss or diminution in value of the Trust Fund not caused by their gross negligence or bad faith; and all persons claiming any beneficial interest in the Trust Fund shall be deemed to take notice of and subject to this clause.
- 12. A majority of the Trustees shall be required for any action taken on behalf of the Trust. In the event that there is a tie vote of the Trustees voting, the Chief shall have a second and casting vote.

Each of this Trustees, by joining in the execution of this Trust Agraement, signifies his acceptance of the Trust herein. Any Chief or Councillor or any other person who becomes a Trustee under paragraph 5 above shall signify his acceptance of the Trust herein by executing this Trust Agreement or a true copy hereof, and shall be bound by it in the same manner as if he or she had executed the original Trust Agreement.

IN WITHESS WHEREOF the parties hereto have executed this Trust Agreement.

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in the presence of:	
4) Capacitus T	A. Settlor Walter J.
HAHE H910, 10310 THEYEKINE KNOWN FLOT ADDRESS	<b>∤</b>
	B. Trustces:
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NAME	100
ADDRESS	

day

My Commission Expires

January 29, 20 12,

DECLARATION OF TRUST MADE THIS 16TH DAY OF APRIL, This is Exhibit " T " referred to in the B For Identification thibit of Question 1985. Affidavit of Exhibit A Questioning of: Darcy A Twin Court Reporter: BETWEEN: Shelley Backer or September Magnas WALTER PATRICK TWINN, SAM TWANNIE AND C. A Commissioner for Oaths In and for the Province of Alberta GEORGE TWIN (hereinafter referred to collectively Catherine A. Magnan as the "Old Trustees") OF THE FIRST PART AND: WALTER PATRICK TWINN, SAM TWIN AND GEORGE TWIN (hereinafter referred to collectively as the "New Trustees") . OF THE SAWRIDGE INTER VIVOS SETTLEMENT OF THE SECOND PART WHEREAS the "Old Trustees" of the Sawridge Band Trust (hereinafter referred to as the "trust") hold legal title to the assets described in Schedule "A" and settlor Walter P. Twinn by Deed in writing dated the 15th day of April, 1985 created the Sawridge Inter Vivos Settlement (hereinafter referred to as the "settlement").

AND WHEREAS the settlement was ratified and approved at a general meeting of the Sawridge Indian Band held in the Band Office at Slave Lake, Alberta on April 15th, A.D. 1985.

NOW THEREFORE this Deed witnesseth as follows:

The undersigned hereby declare that as new trustees they now hold and will continue to hold legal title to the assets described in Schedule "A" for the benefit of the settlement, in accordance with the terms thereof.

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Further, each old trustee does hereby assign and release to the new trustees any and all interest in one or more of the promissory notes attached hereto as Schedule "B".

WINESS:

OLD TRUSTEES

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NEW TRUSTEES

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	Walls of		
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			-

# SCHEDULE "A"

SAWRIDGE HOLDINGS LTD .-- SHARES

WALTER PATRICK THINN 30 CLASS "A" COMMON

GEORGE TWIN 4 CLASS "A" COMMON

SAM TWIN 12 CLASS "A" COMMON

SAWRIDGE ENERGY LTD. --- SHARES

; ;

WALTER PATRICK TWINN 100 CLASS "A" COMMON

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of TWO HUNDRED AND NINETY-THREE THOUSAND, ONE HUNDRED AND SEVENTY-EIGHT (\$293,178.80) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, DN DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial landing rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario on a substantial Canadian Dollar loans to its prime risk pownercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova-Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in affect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 1946 day of December . A.D. 1983.

SAWRIOGE HOLDINGS LTD.

Per: Walley

Per //

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD, a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of CNE HUNDRED THOUSAND (\$100,000.00) ODLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotie on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial landing rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nove Scotie the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum belance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current martgage rate than in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest; demand for payment and notice of non-payment. ::

DATED at the City of Edmonton, in the Province of Alberta, this 19 December . A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Per: 41027

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of SIXTY THOUSAND (\$60,000.00) COLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate heraunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate them in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the affective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

17

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19 day of December, A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Peri-lelologia

Per: Up/h

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinefter referred to as the "Trustees"), the sum of TWENTY FOUR THOUSAND, SIX HUNDRED AND TWO (\$24,602.00) BOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, CN DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial landing rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to es the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this if day of December , A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Peri Lilatta 2

Per: 9/2-

- 3

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinefter referred to as the "Trustees"), the sum of TWENTY THOUSAND, ONE HUNDRED AND EIGHTY FOUR (\$20,184.00) DOLLARS in lawful money of Canada-at-Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial landing rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to es the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whather or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waivs presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19 day of December . A.D. 1983.

SAWRIDGE HOLDINGS LTD.

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FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserva hear Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of TWENTY THOUSAND, ONE HUNDRED AND EIGHTY ONE (\$20,181.00) DOLLARS In lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the prime commercial landing rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Oblian loans to its prime risk-commercial customers (hereinefter referred to at "prime rats"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate than in effect (hereinafter referred to as the "current mortgage" rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgegor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate than in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19 day of December . A.D. 1983.

SAWRIOGE HOLDINGS LTD.

Peri College

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pey to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of EIGHT THOUSAND, ONE HUNDRED AND THIRTY EIGHT (\$8,138.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after meturity until all sums of interest and principal are paid.

Interest to be determined at a rate par annum equal to Three (3%) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial pustomers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum belance, shall be the percentage stipulated for the periods aforesaid plus the prime rate than in effect (hereinafter referred to:as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in affect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this !! day of December . A.D. 1983.

SAWRIDGE HOLDINGS LTD.

Geff :-

FOR VALUE RECEIVED SAWRIDGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Sawridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WALTER PATRICK TWINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of FORTY FOUR THOUSAND, (\$44,000.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, ON DEMAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial landing rate published and charged by the Bank of Nove Scotia on substantial Genedian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (3%) Percent in excess of the orime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all emounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods eforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby walves dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate than in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this 19 day of December . A.D. 1983.

SAWRIOGE HOLDINGS LTD.

Peri Golf

FOR VALUE RECEIVED SAVRINGE HOLDINGS LTD. a Federally incorporated company maintaining its head office on the Savridge Indian Band Reserve near Slave Lake, in the Province of Alberta, hereby promises to pay to WAITER PATRICK TVINN, SAM TWINN AND GEORGE TWINN (together being the Trustees of the Sawridge Band Trust, hereinafter referred to as the "Trustees"), the sum of TVO HUNDRED FIFTY ONE THOUSAND THREE HUNDRED (\$251,300.00) DOLLARS in lawful money of Canada at Edmonton, in the Province of Alberta, CN DEWAND, together with interest thereon, calculated and compounded semi-annually (not in advance) at a rate per annum equal to Three (3%) per cent in excess of the prime commercial lending rate published and charged by the Bank of Nova Scotia on substantial Canadian Dollar loans to its prime risk commercial customers, both before as well as after maturity until all sums of interest and principal are paid.

Interest to be determined at a rate per annum equal to Three (31) Percent in excess of the prime commercial lending rate published and charged by The Bank of Nova Scotia (a Chartered Bank of Canada with Corporate Head Offices in the City of Toronto, in the Province of Ontario) on a substantial Canadian Dollar loans to its prime risk commercial customers (hereinafter referred to at "prime rate"), until all amounts secured hereunder are paid. It being further understood and agreed that if and whenever the prime rate is a variable rate published and charged by the Bank of Nova Scotia from time to time. It being further understood and agreed that if and whenever the prime rate is varied by The Bank of Nova Scotia the interest rate hereunder shall also be varied, so that at all times the interest rate hereunder, computed on the daily minimum balance, shall be the percentage stipulated for the periods aforesaid plus the prime rate then in effect (hereinafter referred to as the "current mortgage rate"). The Mortgagor, by these presents, hereby waives dispute of and contest with the prime rate, and of the effective date of any change thereto, whether or not the Mortgagor shall have received notice in respect of any change. It being provided and agreed that interest at the current mortgage rate then in effect from time to time on the principal sum, or on such part thereof as has been from time to time advanced and is then outstanding, computed from (and including) the date the principal sum or any such part is advanced.

WE HEREBY waive presentment for payment, notice of protest, demand for payment and notice of non-payment.

DATED at the City of Edmonton, in the Province of Alberta, this | 100 day of the country | A.D. 1983.

SAWRIDGE HOLDINGS LITD.

Per: 16 16 10 2

Per: 4/2

Oct 18 7019 Questioning of Darpy A Court Reporter:\_\_ Shelley Becker

This is Exhibit " H " referred to in the Affidavit of SAWRIDGE BAND TRUST Swom before me this

of September

RESOLUTION OF TRUSTEES A Nevery Public, A Commissioner for Oaths

in and for the Province of Alberta

Catherine A. Magnar My Commission Expires

WHEREAS the undersigned are the Trustees of amnuary 29, 20 inter vivos settlement (the Save Lighter water water and the later partial water pa

AND WHEREAS the beneficiaries of the Sawridge Band Trust are the members, present and future, of the Sawridge Indian Band (the "Band"), a band for the purposes of the Indian Act R.S.C., Chapter 149;

AND WHEREAS amendments introduced into the House of Commons on the 28th day of February, 1985 may, if enacted, extend membership in the Band to certain classes of persons who did not qualify for such membership on the 15th day of April, 1982;

AND WHEREAS pursuant to paragraph 6 of the instrument (the "Trust Instrument") establishing the Trust the undersigned have complete and unfettered discretion to pay or apply all or so much of the net income of the Trust Fund and all or so much of the capital of the Trust Fund as they in their unfettered discretion from time to time deem appropriate for the beneficiaries of the Trust;

AND WHEREAS for the purpose of precluding future uncertainty as to the identity of the beneficiaries of the resettling the assets of the Trust for the benefit of only those persons (the "Beneficiaries") who qualify, or would in the future qualify, for membership in the Band under the provisions of the Act in force on the 15th day of April, 1982;

App. 1985 between Chief Walter Patrick Twinn, as Settlor, and the undersigned as Trustees, an inter vivos settlement (the "Sawridge Band Inter Vivos Settlement") has been constituted for the benefit of the Beneficiaries;

### now therefore be it resolved that

the power conferred upon the undersigned in their capacities as Trustees of the Trust pursuant to paragraph 6 of the Trust Instrument be and the same is hereby exercised by transferring all of the assets of the Trust to the

undersigned in their capacities as Trustees of the Sawridge Band Inter Vivos Settlement; and

Chief Walter Patrick Twinn is hereby authorized to execute all share transfer forms and other instruments in writing and to do all other acts and things necessary or expedient for the purpose of completing the transfer of the said assets of the Trust to the Sawridge Band Inter Vivos Settlement in accordance with all applicable legal formalities and other legal requirements.

DATED the 15th day of Ma

-ACCEPTANCE BY TRUSTEES ..

The undersigned in their capacities as Trustees of the Sawridge Band Inter Vivos Settlement hereby declare that they accept the transfer of all of the assets of the Trust and that they will hold the said assets and deal with the same hereafter for the benefit of the Beneficiaries in all respects in accordance with the terms and provisions of the Sawridge Band Inter Vivos Settlement.

DATED the 15 day of H

Same?

D For Dentification
Exhibit Date: Oct 10 2019
Questioning of: Dargo A Twin
Court Reporter: Shelley Backer

21902 Trust DOCS DOCS

# SAWRIDGE BAND RESOLUTION

WHEREAS the Trustees of a certain trust dated the 15th day of April, 1982, have authorized the transfer of the trust assets to the Trustees of the attached trust dated the 15th day of April, A.D., 1985.

AND WHEREAS the assets have actually been transferred this 15th day of April, A.O. 1985.

THEREFORE BE IT RESOLVED at this duly convened and constituted meeting of the Sawridge Indian Band at the Band Office in Slave Lake, Alberta, this 15th day of April, A.D. 1985, that the said transfer be and the same is hereby approved and ratified.

as to all synatures
Bruce & Thom

This is Exhibit "I" referred to in the Africavit of Bullotto Bworn before me this 2 day of Se Atem bor A.D., 20 11

Calherine A. Magnan My Commission Expired January 29, 20 San Della Floring
Cheen Suin
Cheen Suin
Cheen Suin
Cheen Suin



EXHIBIT: 5

Date:

QUESTIONING OF:

Allison Hawkins, CSR(A)

OF TOUT PUTE TO

From:

Bonora, Doris <doris.bonora@dentons.com>

Sent:

Friday, May 13, 2016 4:57 PM

To:

'Janet Hutchison' (jhutchison@jlhlaw.ca); Karen Platten; Crista Osualdini; Edward H.

Molstad; Marco S. Poretti; Gabriel Joshee-Arnal

Cc:

Brian Heidecker; 'Paul@sawridgetrusts.ca'

Subject:

Clarification of the transfer issue

Attachments:

21595350\_1.docx

We are attaching a draft of the clarification of the transfer issue for your review and comments. This is intended to try and resolve this issue. If the clarification is acceptable we could draft a consent order to deal with this issue. We understood that Catherine Twinn and the OPGT had concerns that the transfer issue involved an accounting and we have attempted to make this clear. We would be pleased to hear your comments so that we can perhaps move shead to resolve this single matter.

Doris

X BIGIN

Doris C.E. Bonora Partner

D +1 780 423 7188 doris.bonora@dentons.com Bio | Website

Dentons Canada LLP 2900 Manulife Place, 10180 - 101 Street Edmonton, AB T5J 3V5 Canada

人成 Salans FMC SNR Denton McKenna Long

Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This email may be confidential and protected by legal privilege. If you are not the intended recipient, disclosure, copying, distribution and use are prohibited; please notify us immediately and delete this email from your systems. To update your commercial electronic message preferences email <a href="mailto:dentonic.com">dentonic.com</a> or visit our website. Please see dentons.com for Legal Notices

## Clarification of the transfer issue

The Sawridge Trustees seek to have the Court approve the transfer of assets which occurred in 1985 from the Sawridge Band Trust ("1982 Trust") to the Sawridge Band Inter Vivos Settlement ("1985 Trust") nunc pro func.

The approval of the transfer by the Court shall not be deemed to be an accounting of the assets of the 1982 trust that were transferred and shall not be deemed to be an accounting of the assets in the 1985 trust that existed upon settlement of the trust in 1985. The sole issue before the Court is to approve the transfer of assets from the 1982 trust to the 1985 trust such that there shall not be a challenge to the transfer from one trust to the other which occurred in 1985.



Doris Bonora

doris.bonora@dentons.com D +1 780 423 7188 Dentons Canada LLP 2900 Manulife Place 10180 - 101 Street Edmonton, AB, Canada T5J 3V5

大成 Salans FMC SNR Denion McKenna Long denions.com

File No.: 551860-1

Questioning of:

Court Reporter:

June 22, 2016

SENT VIA E-MAIL: [hutchison@jlhlaw.ca

Hutchison Law #190 Broadway Business Square 130 Broadway Boulevard Sherwood Park AB T8H 2A3

Attention: Janet L. Hutchison

Dear Madam:

RE:

Sawridge Band Inter Vivos Settlement (1985 Sawridge Trust)

QB Action No. 1103 14112

Offer of settlement on the Transfer Issue

With Prejudice

We are writing to make a formal offer of settlement to the OPGT in respect of the issue of the transfer of assets from the 1982 trust to the 1985 trust. We believe that this issue is simple. This issue involves simply normalizing the transfer of assets from one trust to the other trust. It does not involve an accounting of the assets in either trust or an accounting of the assets that transferred. The accounting is not an issue that the trustees have raised in this application. The trustees understand that the beneficiarles are free to bring an application for an accounting in respect of the transfer of assets and an accounting of the assets in the 1985 trust. The trustees are stating on a with prejudice basis that an order of the court to approve the transfer of assets from one trust to the other trust will not be raised to argue that any subsequent accounting application brought by any beneficiary is res judicata. Of course, the transfer issue itself that is addressed in the Consent Order will be res judicata.

Thus, we offer to settle the transfer issue by entering into the attached consent order. We believe the order sets out exactly what we have stated above and believe it protects the ability of any beneficiary to bring an accounting application.

The offer to settle by entering into the consent order is open for acceptance until July 15, 2016. In the event that the offer is not accepted, then the offer will be made known to the court from the perspective of an answer to the request for documents in the OPGT Rule 5.13 application on the transfer issue. The offer will also be made known to the court in support of an application for costs in the event that the OPGT is not successful in its Rule 5.13 application given that the clarification in the attached consent order should assist the OPGT to determine that it need not proceed with its extensive Rule 5.13 application on the transfer issue.



June 22, 2016 Page 2

We note that the Sawridge Trustees are the applicants in this application. To that end, it is up to the applicants to define the issue they wish to have addressed and the relief that they seek. No accounting relief is being sought, no relief is being sought to prevent a beneficiary from seeking an accounting. We have provided that clarification orally, in writing and now in the form of a consent order and formal with prejudice offer.

We are seeking to keep the costs in control. We make this offer in the hopes that the OPGT will respond positively to say that the transfer of assets from one trust to the other does not prejudice or in any way harm the minor beneficiaries provided their rights are protected to seek a future accounting.

The 1985 trust has been operating since 1985 with assets transferred to it from the 1982 trust. The problem for the trustees is really a dearth of information and documentation in respect of the trust to trust transfer. We simply wish to have the court agree that the transfer is approved and the 1985 trust is the entity with which to deal.

We do not see this as complex. We hope the OPGT can see that dealing with this issue poses no risk to the minor beneficiaries.

We believe this offer is in keeping with the direction of the Court to the parties to focus and to proceed expeditiously with the litigation.

This offer is open for acceptance until July 15, 2016.

Yours truly

Dentons Canada LLP

Doris Bonora

DCEB/clg Enclosure

CC

K. Platten, Q.C., Crista Osualdini McLennan Ross (Catherine Twinn) (via email)

cc Marco Poretti, Reynolds, Mirth, Richards & Farmer LLP (via email)

cc E. Moistad, Q.C., Parlee McLaws LLP (via email)

cc Paul Bujold (via email)

cc Brian Heidecker (via email)

### Clerk's Stamp:

COURT FILE NUMBER

1103 14112

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

**EDMONTON** 

IN THE MATTER OF THE TRUSTEE ACT, RSA

2000, c T-8, AS AMENDED

IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN, OF THE SAWRIDGE INDIAN BAND, NO. 19 now known as SAWRIDGE FIRST NATION ON APRIL 15,

1985 (the "1985 Sawridge Trust")

**APPLICANTS** 

ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE and CLARA MIDBO, as Trustees for the 1985 Sawridge Trust (the "Sawridge Trustees")

**DOCUMENT** 

ORDER

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY

FILING THIS DOCUMENT

Doris C.E. Bonora Dentons Canada LLP 2900 Manulife Place 10180 -- 101 Street

Edmonton, Alberta T5J 3V5

Ph. (780) 423-7188 Fx. (780) 423-7276

File No.: 551860-1

DATE ON WHICH ORDER WAS PRONOUNCED: \_\_\_\_\_\_, 2016

LOCATION WHERE ORDER WAS PRONOUNCED: Edmonton, AB

NAME OF JUSTICE WHO MADE THIS ORDER: Mr. Justice D.R.G. Thomas

# **ORDER**

UPON HEARING representations from counsel for the Sawridge Trustees, Catherine Twinn as a Trustee of the 1985 Sawridge Trust, and the Office of Public Guardian and Trustee of Alberta;:

IT IS HEREBY ORDERED THAT:

1. The transfer of assets which occurred in 1985 from the Sawridge Band Trust ("1982 Trust") to the Sawridge Band Inter Vivos Settlement ("1985 Trust") is approved nunc pro tunc. The approval of the transfer shall not be deemed to be an accounting of the assets of the 1982 Trust that were transferred and shall not be deemed to be an accounting of the assets in the 1985 Trust that existed upon settlement of the 1985 Trust.

The Honourable Mr. Justice D.R.G. Thomas

## APPROVED AS TO FORM AND CONTENT BY:

Dentons Canada LLP

Reynolds Mirth Richards & Farmer LLP

Doris Bonora

Counsel for Sawridge Trustees

Marco S. Poretti

Counsel for Sawridge Trustees

McLennan Ross LLP

**Hutchison Law** 

Karen Platten, Q.C. Counsel for Catherine Twinn as a Trustee of the 1985 Sawridge Trust Janet Hutchison
Counsel for The Office of the Public
Guardian and Trustee



July 6, 2016

EDWARD II. MOLSTAD, Q.C. DIRECT DIAL: 780 423 8506 DIRECT FAX: 780.423 2870 EMAIL: emolstad@parlec com OUR FILE #: 64203-7/EHM

Via email only



Hutchison Law 190 Broadway Business Square 130 Broadway Boulevard Sherwood Park, Alberta T8H 2A3

Attention: Ms. Janet Hutchison

Dear Madam:

Re: Sawridge Band Inter Vivos Settlement (1985 Sawridge Trust)

QB Action No. 1103 14112

With Prejudice Offer of Settlement of Transfer Issue

We confirm that we received a copy of the with prejudice offers to settle made by the Sawridge Trustees to the Public Trustee and to Catherine Twinn in the letter from Dentons Canada LLP, dated June 22<sup>nd</sup>, 2016.

It is the position of the Sawridge First Nation that this settlement offer is reasonable and resolves any possible concerns with respect to the approval of the transfer of the assets from the 1982 Trust to the 1985 Trust.

As previously noted, the Sawridge First Nation will be claiming costs payable by the Public Trustee on the basis that these costs not be paid from the Sawridge Trust. In the event that the Sawridge Trustee's offer regarding the transfer of assets is not accepted by the Public Trustee, the Sawridge First Nation will be submitting to the Court as part of its response to the Public Trustee's Rule 5.13 application regarding the transfer of assets that the Court take the Public Trustee's response to the offer into consideration in relation to Sawridge First Nation's application for costs.

Yours truly,

PARLEE MCLAWS LLP

EDWARD H. MOLSTAD, Q.C.

EHM/tlk

EDMONTON | WWW.PARLEE.COM | CALGARY

(E7197937.DOCX: 1)

Cc: Reynolds Mirth Richards & Farmer LLP - Attn: Mr. Marco Poretti

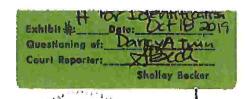
Cc: Dentons LLP - Attn: Ms Doris Bonora

Cc: Bryan & Company -- Attn: Ms Nancy Cumming, Q.C.

Cc: McLennan Ross LLP - Attn: Ms Karen Platten, Q.C. Cc: McLennan Ross LLP - Attn: Ms Crista Osualdini

Cc: Supreme Advocacy LLP - Mr. Eugene Meehan, Q.C.

(ALL VIA EMAIL ONLY)





**CLERKS STAMP** 

COURT FILE NUMBER

1103 14112

COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL CENTRE

Edmonton

IN THE MATTER OF THE TRUSTEE ACT, R.S.A. 2000, c, T-8, AS AMENDED

IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN OF THE SAWRIDGE INDIAN BAND, NO. 19 now known as SAWRIDGE FIRST NATION ON APRIL 15, 1985 (the "1985 Sawridge Trust")

**APPLICANTS** 

ROLAND TWINN, MARGARET WARD, BERTHA L'HIRONDELLE, EVERETT JUSTIN TWIN AND DAVID MAJESKI as Trustees for the 1985 Sawridge Trust:

DOCUMENT

LITIGATION PLAN

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Dentons Canada LLP 2900 Manuilfe Place 10180 - 101 Street Edmonton, AB T6J 3V5

Attention:

Daris C.E. Bonora

Telephone: Fax: (780) 423-7100 (780) 423-7276

File No: 551860-001-DCEB

1. The remaining steps and procedures are to be completed on or before the dates specified below:

NO.	ACTION	DEADLINE
1.	Case Management Meeting	December 18, 2018
2.	Jurisdiction Application - Deadline for the Trustees to file their Affidavit in relation to the Jurisdiction Question	January 11, 2019
3	Application to be brought by any non-party to the litigation who wishes to participate in the Jurisdiction Application, other than beneficiaries or potential beneficiaries, the participation rights of whom are addressed in the Consent Order consented to by the parties and by counsel for Shelby Twinn and Patrick Twinn. Application by any beneficiary or potential beneficiary to participate in the Jurisdiction. Application in a more significant way then is provided in the said Consent Order.	January 31, 2019
4.	Participation Application in person on February 11, 2019 alternatively, filing of written argument in response to participation application if application proceeds in writing (if required)	February 11, 2019
5.	Jurisdiction Application - Questioning by the OPGT and Catherine Twinn on the Trustees' Affidavit to take place no later than  (May be done by written interrogatories)	February B, 2019
<b>6</b> .	Jurisdiction Application – Answers to Undertakings arising from the questioning on the Trustees' Affidavit are due	February 13, 2019
7.	Jurisdiction Application - Any rebuttet Affidavits to be filed by the OPGT and Catherine Twinn are due	February 27, 2019
8.	Jurisdiction Application - Questioning by the Trustees on the Rebuttal Affidavits filed by the OPGT and Catherine Twinn will take place no later than  (May be done by written interrogatories)	March 8, 2019
9.	Jurisdiction Application - Answers to Undertakings, if any, from the OPGT and Catherine Twinn are due	March 22 2019
10	Jurisdiction Application - Brief of the Trustees is due	March 29, 2019
11	Jurisdiction Application – Brief of the OPGT and Catherine Twinn are dus	April 12, 2019

NO.	AOTIONATIVA	A AND EADUNE
12.	Jurisdiction Application; Brief by any non-party beneficiary or potential beneficiary (limited to 5 pages)  "this item is subject to outcome of any additional Participation Application—Shelby Twinn and Patrick Twinn shall abide by this deadline	April 12, 2018
13.	Jurisdiction Application - Reply Brief of the Trustees is due	April 18, 2019
14.	Jurisdiction Application Hearing	April 25, 2019
15.	Questioning on Affidavit of Records to be completed in the time period	30 days following both the issuance of the decision for the Jurisdiction Application and the expiration of any relevant eppeal period
16.	Answers to Undertakings from questioning on Affidavit of Records by	45 days following the completion of Questioning on Affidavit of Records
17.	All other steps to be determined in a case management hearing	TBD

The Honourable Justice J. T. Henderson

CONSENTED TO BY: MCLENNAN ROSS LLP	HUTCHISON LAW
Crista Osualdini	Jamet Hutchigen
Counsel for Catherine Twinn	Counsel for the Office of the Public Guardian and
DENTONS CANADA LLP	Truslee /
Doris Bonore Counsel for the Sawridge Trustees	

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NO.	ACTION	DEADLINE	
12,	Jurisdiction Application: Brief by any non-party beneficiary or potential beneficiary (limited to 5 pages)  ** this item is subject to outcome of any additional Participation Application —Shelby Twinn and Patrick Twinn shall abide by this deadline	April 12, 2019	
13.	Jurisdiction Application - Reply Brief of the Trustees is	April 18, 2019	
	due	ן ריףווו וען בטוט	
14.	Judadiction Application Hearing	April 25, 2019	
15.	Questioning on Affidavit of Records to be completed in the time period	30 days following both the Issuance of the decision for the Jurisdiction Application and the expiration of any relevant appeal period	
18.	Answers to Undertakings from questioning on Affidavit of Records by	45 days following the completion of Questioning on Affidavit of Records	
17.	All other steps to be determined in a case management heading	TBD	

CONSENTED TO BY: MCLENNAN ROSS LLP

**HUTCHISON LAW** 

Crista Ostraidini Counsal for Catherine Twinn

ENTONS CANADA LLP

Janet Hutchison Counsel for the Office of the Public Guardian and Trustee

skorore isel for the Sawridge Trustees

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# TAB 1

# ALBERTA CIVIL PROCEDURE HANDBOOK

2020

**VOLUME 1** 

FIELD LAW LIBRARY

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**JURILIBER** 

### A. Introduction

There being no former Rules on interveners, the common-law principles formerly applied; and new R. 2.10 does not suggest that the old common-law rules cease to apply.1

On interventions in appeals, see R. 14.58n.

Courts have an inherent power to allow a non-party to intervene in an action.2

One must distinguish the standing of an existing party to raise an issue (such as a certain Charter right), from the question of letting non-parties intervene.3

# B. Who Can Intervene<sup>4</sup>

Someone wishing to intervene must show either special expertise, special circumstances, or that the suit would have a special effect upon him or her.<sup>6</sup> A body with no interests at stake but useful expertise sometimes gets leave to intervene.<sup>8</sup> Conversely, someone affected only by precedent but with no fresh expertise or information should not intervene.<sup>7</sup> A group with some expertise but no fresh viewpoint or new information, and totally unaffected by the result, was not allowed to intervene in an appeal which already had affected parties on both sides.<sup>8</sup>

The proposed intervener may be somebody specially affected by the decision,<sup>9</sup> or it may have some special expertise or insight. There can also be an intervener where the existing party will not fully protect or argue the position of the non-party. The court should first look at the subject matter of the proceeding and then look at the interest of the proposed intervener. Also relevant are delay, prejudice, widening the dispute, and making the court a political forum.

Univ. of Alta. v. Info. & Privacy Comm'r. 2011 ABQB 389, 55 Alta LR(5th) 131.

In an appeal in a dispute with one Metis Settlement, another Settlement was allowed to Intervene because what was in issue was the criteria for admitting members to all Settlements. The only person taking one constitutional position was an individual with no lawyer, and an amicus curiae was appointed to represent her and her viewpoint: Min. of Justice v. Métis Settlements Appeal Tribunal 2005 ABCA 143, 367 AR 34. In a complex area where computer calculations are often used, a private software firm was allowed to appear as a friend of the court and explain discrepancies in support calculations: Kelly v. Kelly 1998 ABQB 220, 231 AR 383 and 389. In a criminal case, a police service got intervener status, because it had an interest in the procedure for disclosing wiretap evidence: R. v. Szczerba (#2) 2002 ABQB 660, 321 AR 102.

3 See Carbon Dev. P'ship. v. A.E.U.B. 2007 ABCA 231.

There is some discussion of principles, in Edmonton (City) v. Edm. S.D.A.B. (Urban Dev. Inst.) 2014
ABCA 340, 584 AR 255. For citation of some authority on interventions, see R. v. Hirsekorn 2011 ABQB
156, [2011] AR Uned 70 (Mar 14). The common-law rules for intervention are reviewed, in R. v. Trang 2002
ABQB 185, [2002] 8 WWR 755.

Dir. of Human Rts. etc. v. Kellogg, supra; Alta. Pro-Life v. Univ. of Alta. 2018 ABCA 350, Edm 1703 0283 AC (one JA); R. v. Ndhlovu 2019 ABCA 132, Edm 1803 0111 A (one JA).

6 Lameman v. A.-G. Can. (#1) 2005 ABCA 320, 380 AR 301. But an Indian Band usually has to show some legal and factual interest in the subject matter: Dene Tha' F.N. v. A.E.U.B. 2005 ABCA 68, 363 AR 234, leave den [2005] 2 SCR vil.

7 Pedersen v. R., supra.

Ë

H;

- 8 Cdn. Centre for Bio-Ethical Reform v. Grande Prairie (City) 2017 ABCA 280, Edm 1703 0017 AC (one JA Sep 1).
- 9 Such as an association of the great majority of persons affected: Edmonton (City) v. Edm. S.D.A.B., supra. But some cases deny intervention to those affected, if others similarly situate are already parties and will represent that interest: Calder v. 1088294 Alta. (Re Stewart Est.) (#1) 2014 ABCA 222, 577 AR 57 (one JA); Porter v. Anytime Custom Mech. 2014 ABQB 193, 586 AR 89. See also Part D below.

10 Univ. of Alta. v. Info. & Privacy Comm'r. 2011 ABQB 389, 55 Alta LR(5th) 131 (¶s 13-14); Alta. Pro-Life v. Univ. of Alta., supra.

11 Alta. Pro-Life v. Univ. of Alta., supra.

# TAB 2

# **O** ALBERTA RULES OF COURT, Alta. Reg. 124/2010

Alberta Rules of Court

Enabling Act: Judicature Act

Alta. Reg. 124/2010

Alberta Rules of Court > Judicature Act > ALBERTA RULES OF COURT > Part 2 The Parties to Litigation > Division 1 Facilitating Legal Actions

Part 2

The Parties to Litigation

Division 1

**Facilitating Legal Actions** 

**RULE 2.1** 

Actions by or against personal representatives and trustees

2.1 An action may be brought by or against a personal representative or trustee without naming any of the persons beneficially interested in the estate or trust.

End of Document

# TAB 3

# Canadian Centre for Bio-Ethical Reform v. Grande Prairie (City), [2017] A.J. No. 905

Alberta Judgments

Alberta Court of Appeal F.L. Schutz J.A.

Heard: August 22, 2017.

Judgment: September 1, 2017.

Docket: 1703-0017-AC Registry: Edmonton

[2017] A.J. No. 905 | 2017 ABCA 280

Between Canadian Centre for Bio-Ethical Reform, Respondent, and The City of Grande Prairie, Respondent, and Justice Centre for Constitutional Freedoms, Applicant

(30 paras.)

# **Case Summary**

Civil litigation — Civil procedure — Parties — Intervenors — Charter litigation — Application by JCCF to intervene in appeal by CCBR from dismissal of application for judicial review of City's refusal to permit anti-abortion advertisements on outside of busses dismissed — JCCF lacked particular expertise in issues relating to freedom of expression to provide court with necessary perspective — JCCF's argument about appropriate government limits on public abortion debate was not raised by parties and there was no reason to expand appeal — Argument about government's neutrality in restricting freedom of expression was not new or novel — Alberta Rules of Court, Rules 14.37, 14.58.

Constitutional law — Canadian Charter of Rights and Freedoms — Reasonable limits on Charter rights — Fundamental freedoms — Freedom of thought, belief, opinion and expression — Freedom of expression — Application by JCCF to intervene in appeal by CCBR from dismissal of application for judicial review of City's refusal to permit anti-abortion advertisements on outside of busses dismissed — JCCF lacked particular expertise in issues relating to freedom of expression to provide court with necessary perspective — JCCF's argument about appropriate government limits on public abortion debate was not raised by parties and there was no reason to expand appeal — Argument about government's neutrality in restricting freedom of expression was not new or novel — Canadian Charter of Rights and Freedoms, s. 2(b).

Constitutional law — Constitutional proceedings — Practice and procedure — Parties — Application by JCCF to intervene in appeal by CCBR from dismissal of application for judicial review of City's refusal to permit anti-abortion advertisements on outside of busses dismissed —

JCCF lacked particular expertise in issues relating to freedom of expression to provide court with necessary perspective — JCCF's argument about appropriate government limits on public abortion debate was not raised by parties and there was no reason to expand appeal — Argument about government's neutrality in restricting freedom of expression was not new or novel — Canadian Charter of Rights and Freedoms, s. 2(b).

Application by the Justice Centre for Constitutional Freedoms (JCCF) for intervenor status in an appeal by the Canadian Centre for Bio-Ethical Reform (CCBR) from the dismissal of its judicial review application. CCBR sought review of a decision by the City of Grande Prairie to deny its application to affix anti-abortion advertisements on the exterior of City buses. The review judge considered the City's decision a reasonable limit on freedom of expression. The JCCF was a not-for-profit organization focused on free speech education and litigation. It sought to make submissions in the appeal about how freedom of expression protected speech might provoke an emotional response, how government should not arbitrarily censor public debate on the legality of abortion, and how the government needed to be neutral when regulating the content of expression.

HELD: Application dismissed.

JCCF had no special expertise to assist the court and no interest in the outcome of the appeal. Its contributions would not be useful, different or bring a particular expertise to the subject matter of the appeal. The argument about public debate on the legality of abortion was not raised by the parties to the appeal, and there was no reason to expand the issues on appeal, against the wishes of the City. There was nothing new about JCCF's proposed arguments about the content of justifiable limits on expression and the neutrality of government.

# Statutes, Regulations and Rules Cited:

Alberta Rules of Court, AR124/2010, Rule 14.37(2)(e), Rule 14.58, Rule 14.58(3)

Canadian Charter of Rights and Freedoms, 1982, s. 1, s. 2(b)

#### Appeal From:

Application for Permission to Intervene.

# Counsel

M. Moore, for the Applicant.

C. Crosson (no appearance), for the Respondent, Canadian Centre for Bio-Ethical Reform.

R.G. Mcvey, QC, for the Respondent, The City of Grande Prairie.

# **Reasons for Decision**

# F.L. SCHUTZ J.A.

# Introduction

- 1 The Justice Centre for Constitutional Freedoms ("JCCF") seeks leave to intervene on this appeal; it wishes to make submissions in respect of freedom of expression under s 2 (b) of the Canadian Charter of Rights and Freedoms (the "Charter").
- 2 The appellant supports JCCF's application but does not articulate the reasons therefor. The City, as respondent both to this application and on appeal, opposes JCCF's application.
- 3 For the reasons following, the application is dismissed.

# Relevant Background

- 4 The Canadian Centre for Bio-Ethical Reform ("CCBR") applied to the City of Grande Prairie to affix anti-abortion advertisements onto the exterior of the City's public transportation buses. The City denied the application. CCBR brought an application for judicial review, seeking to quash the decision of the City and seeking a declaration, from an administrative law standpoint, that the City's decision was unreasonable.
- 5 The judicial review judge's decision set out that the issue before her was "the extent to which a municipality can control the content of advertising on its public transit system without unjustifiably infringing an advertiser's fundamental right to freedom of expression set out in the" Charter.
- 6 The reviewing judge determined that the City's decision was a reasonable limit on freedom of expression: Canadian Centre for Bio-Ethical Reform v Grande Prairie (City), 2016 ABQB 734.
- 7 Essentially, the subject-matter of the upcoming appeal is whether the judicial review judge's decision that the City's denial was a reasonable limit on the CCBR's Charter-protected freedom of expression is entitled to appellate deference, or requires correction.

# Test for Leave to Intervene

8 Rules 14.37(2)(e) and 14.58 of the Alberta Rules of Court, AR124/2010, permit a single judge to

consider an application to intervene and to impose conditions. Unless otherwise ordered, the intervenor may not raise or argue issues not raised by the other parties to the appeal: Rule 14.58(3).

- 9 A single appeal judge may grant permission to intervene in an appeal if satisfied that the applicant (a) will be directly and "specially" affected by the outcome of the appeal or, (b) has special expertise or a unique perspective relating to the subject matter of the appeal that will assist the Court in its deliberations: **Papaschase Indian Band (Descendants of) v Canada (Attorney General)**, 2005 ABCA 320 (CanLII) at para 2, 380 AR 301, **Telus Communications Inc v Telecommunications Workers Union**, 2006 ABCA 297 (CanLII) at para 4, 401 AR 57 ("**Telus**").
- 10 Other considerations which bear on these criteria include:
  - 1. Is the presence of the intervenor necessary for the court to properly decide the matter;
  - 2. Might the intervenor's interest in the proceedings not be fully protected by the parties;
  - 3. Will the intervention unduly delay the proceedings;
    - 4. Will there possibly be prejudice to the parties if intervention is granted;
    - 5. Will intervention widen the dispute between the parties; and
    - 6. Will the intervention transform the court into a political arena?

Pedersen v Alberta, 2008 ABCA 192 (CanLII) at para 3, 432 AR 219 ("Pedersen"), Edmonton (City) v Edmonton (Subdivision and Development Appeal Board), 2014 ABCA 340 at paras 8-14; Stewart Estate (Re), 2014 ABCA 222 (CanLII) at para 5, 577 AR 57 ("Stewart Estate"); Styles v Canadian Association of Counsel for Employers, 2016 ABCA 218 at paras 13-15.

11 Granting intervenor status is discretionary and ought to be sparingly exercised: *Telus* at para 4; *Pedersen* at para 4.

# **Analysis**

- 12 In oral argument, counsel for JCCF conceded that the organization was not "specially affected" by this appeal. Rather, it was argued that JCCF should be granted intervenor status because of its special expertise in constitutional matters relating to freedom of expression. The applicant submits that its expertise will assist the Court in coming to a "well-informed and well-reasoned decision", and otherwise falls within its mandate to "[defend] the fundamental freedoms of Canadians protected by s 2".
- 13 The application is supported by the affidavit of one of JCCF's directors, who deposes that JCCF is a non-profit organization focused on free speech education and litigation, and has a material interest in the precedential value of this appeal.
- 14 JCCF's proposed submissions address four topics: (a) freedom of expression protects speech that may disturb, offend, cause emotional responses, or cause fear and confusion; (b) the legality of abortion should be subject to debate in the public square without arbitrary censorship by government; (c) justifiable limits on expression should be objective, consistent, and minimally impairing; and (d) the government is

required to be neutral when it comes to regulating the content of expression.

# (a) Speech That May Disturb is Protected

- 15 In order to intervene, the proposed intervenor must show that its submissions will be useful, different or bring a particular expertise to the subject-matter of the appeal. The City contends that the argument proposed by JCCF on this topic does not raise any new considerations that have not been canvassed by the parties to the appeal, and that no fresh perspective is being brought. Rather, JCCF essentially reiterates the arguments to be presented by the CCBR.
- 16 I am not persuaded that JCCF's contributions would be useful, different or bring a particular expertise to the subject-matter of the appeal. Although JCCF submitted in oral argument that they possessed "highly relevant expertise on the key issue in this appeal", namely, s 2(b) of the Charter, their proposed argument is broad and general.
- 17 In 2017, moreover, this Court is well-equipped to judicially consider the parties' Charter arguments about the scope and content of freedom of expression since there is a substantial volume of Supreme Court of Canada and other appellate authority relating to both s 2(b) and s 1 of the Charter.

# (b) The Public Debate About the Legality of Abortion Ought to Be Unfettered by Arbitrary State Censorship

- 18 The City submits that JCCF's proposed argument has not been raised by the parties to this appeal, and is thus precluded by Rule 14.58(3). I agree. Although the Centre for Bio-Ethical Reform generally contends for the potential value of expression, the argument as framed by JCCF has not been raised by the parties.
- 19 In any event, in my view this argument does not create a sufficient platform to justify granting JCCF intervenor status. Even if it can be said that there is some linkage of this topic to the parties' arguments, and however interesting this topic may be, this issue is not engaged on this appeal and was not put into play by the parties.
- 20 Moreover, I am not persuaded that the parties' issues on appeal ought to be expanded, in the face of vigorous opposition from the City.
  - (c) The Content of Justifiable Limits on Expression; and (d) The Neutrality of Government
- 21 These topics can be dealt with together.
- 22 The City contends that these two topics are exhaustively covered by the parties to the appeal, and there is an abundant body of case law to assist this Court in making a well-reasoned decision based on the materials filed by the parties. I agree.
- 23 Further, there is considerable merit to the City's contention that JCCF was not involved in the creation of the denied advertisement, and it was not directly impacted or affected by the City's decision. Rather, it

is the CCBR that is directly affected by the denial, the judicial review application and this appeal, because it is the party that applied to place the advertisement on the City's public transportation buses.

- 24 Although JCCF and individual members of the public might be interested in, or generally affected by, the outcome of this litigation, such an interest is not enough to satisfy the material interest threshold: **Stewart Estate** at para 6.
- 25 In my view, JCCF has also failed to show that they will bring a fresh perspective to the litigation under either of these arguments. While its submissions differ from those contained in the appellant's submissions, they are not a fresh perspective; substantively, the same submissions have been put before the courts on multiple occasions, and have been the subject of academic debate and discussion. Providing the Court with additional jurisprudence and commentary on that jurisprudence does not constitute a fresh perspective: Stewart Estate at para 13.
- 26 Further, given the generality of the proposed submissions, allowing the applicant to intervene will potentially widen the dispute between the parties, such that the Court becomes a forum for debate that reaches far beyond the scope of the parties' litigation in circumstances where JCCF's presence is not necessary for the Court of Appeal to properly decide this matter.
- 27 Although in the early days of Charter litigation there may well have been a more relaxed approach to intervenors in cases with a constitutional dimension, in *Pederson* at para 4, this Court held that such an approach was no longer necessary, given that "there is now a considerable body of authorities on the Charter and less need for assistance from an intervener."
- 28 JCCF submitted that this Court has continued to allow intervenors where "complex constitutional issues ... with serious and wide ranging policy implications" are in play, citing *Orphan Well Association v Grant Thornton Ltd*, 2016 ABCA 238 at para 11 ("*Orphan Well*"). However, I am not convinced that case works in favour of the applicant. *Orphan Well* involved the interplay between two complicated legal regimes and the precedence that should be given to competing claims under those regimes. The case had implications for the oil and gas industry, the bankruptcy and insolvency bar, and provincial regulators in Alberta and other provinces. It was a case in which there was a palpable need for specialized policy and legal experts to advise on the intra and extra provincial implications of a decision. No such complexities arise in this appeal.

#### Conclusion

- 29 JCCF is not specially affected by this appeal. Moreover, I am not persuaded that JCCF will offer a fresh perspective on this matter or that it has some special expertise or insight necessary for the Court to decide this appeal.
- 30 The application of the proposed intervenor is dismissed.

Reasons filed at Edmonton, Alberta this day of September, 2017

Canadian Centre for Bio-Ethical Reform v. Gr	Frande Prairie (City), [2017	1 A.J. No.	905
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# F.L. SCHUTZ J.A.

**End of Document** 

# TAB 4

# Indian Act, R.S.C. 1985, c. I-5, s. 2

Canada Statutes

**R.S.C. 1985, c. I-5, s. 2** L.R.C. 1985, ch. I-5, art. 2

Canada Statutes > Indian Act > INTERPRETATION

#### INTERPRETATION

# **SECTION 2.**

Definitions

2. (1) In this Act,

"band"

"band" means a body of Indians

- (a) for whose use and benefit in common, lands, the legal title to which is vested in Her Majesty, have been set apart before, on or after September 4, 1951,
- (b) in the case of a band that is named in the schedule to the First Nations Elections Act, the council elected or in office in accordance with that Act,
- (c) in the case of a band whose name has been removed from the schedule to the First Nations Elections Act in accordance with section 42 of that Act, the council elected or in office in accordance with the community election code referred to in that section, or
- (d) in the case of any other band, the council chosen according to the custom of the band, or, if there is no council, the chief of the band chosen according to the custom of the band;

"Band List"

"Band List" means a list of persons that is maintained under section 8 by a band or in the Department;

"child"

"child" includes a legally adopted child and a child adopted in accordance with Indian custom;

"common-law partner"

"common-law partner", in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year;

"council of the band"

"council of the band" means

- (a) in the case of a band to which section 74 applies, the council established pursuant to that section.
- (b) in the case of a band that is named in the schedule to the First Nations Elections Act, the council elected or in office in accordance with that Act,
- (c) in the case of a band whose name has been removed from the schedule to the *First Nations Elections Act* in accordance with section 42 of that Act, the council elected or in office in accordance with the community election code referred to in that section, or
- (d) in the case of any other band, the council chosen according to the custom of the band, or, if there is no council, the chief of the band chosen according to the custom of the band;

"Department"

"Department" means the Department of Indian Affairs and Northern Development;

"designated lands"

"designated lands" means a tract of land or any interest therein the legal title to which remains vested in Her Majesty and in which the band for whose use and benefit it was set apart as a reserve has, otherwise than absolutely, released or surrendered its rights or interests, whether before or after the coming into force of this definition;

"elector"

"elector" means a person who

- (a) is registered on a Band List,
- (b) is of the full age of eighteen years, and
- (c) is not disqualified from voting at band elections;

"estate"

"estate" includes real and personal property and any interest in land;

"Indian"

"Indian" means a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian;

"Indian moneys"

#### Indian Act, R.S.C. 1985, c. I-5, s. 2

"Indian moneys" means all moneys collected, received or held by Her Majesty for the use and benefit of Indians or bands;

"Indian Register"

"Indian Register" means the register of persons that is maintained under section 5;

"intoxicant"

"intoxicant" includes alcohol, alcoholic, spirituous, vinous, fermented malt or other intoxicating liquor or combination of liquors and mixed liquor a part of which is spirituous, vinous, fermented or otherwise intoxicating and all drinks, drinkable liquids, preparations or mixtures capable of human consumption that are intoxicating;

"member of a band"

"member of a band" means a person whose name appears on a Band List or who is entitled to have his name appear on a Band List;

"mentally incompetent Indian"

"mentally incompetent Indian" means an Indian who, pursuant to the laws of the province in which he resides, has been found to be mentally defective or incompetent for the purposes of any laws of that province providing for the administration of estates of mentally defective or incompetent persons;

"Minister"

"Minister" means the Minister of Indian Affairs and Northern Development;

"registered"

"registered" means registered as an Indian in the Indian Register;

"Registrar"

"Registrar" means the officer in the Department who is in charge of the Indian Register and the Band Lists maintained in the Department;

"reserve"

"reserve"

- (a) means a tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a band, and
- (b) except in subsection 18(2), sections 20 to 25, 28, 37, 38, 42, 44, 46, 48 to 51 and 58 to 60 and the regulations made under any of those provisions, includes designated lands;

### Indian Act, R.S.C. 1985, c. I-5, s. 2

"superintendent"

"superintendent" includes a commissioner, regional supervisor, Indian superintendent, assistant Indian superintendent and any other person declared by the Minister to be a superintendent for the purposes of this Act, and with reference to a band or a reserve, means the superintendent for that band or reserve;

"surrendered lands"

"surrendered lands" means a reserve or part of a reserve or any interest therein, the legal title to which remains vested in Her Majesty, that has been released or surrendered by the band for whose use and benefit it was set apart;

"survivor"

"survivor", in relation to a deceased individual, means their surviving spouse or common-law partner.

Definition of "band"

(2) The expression "band", with reference to a reserve or surrendered lands, means the band for whose use and benefit the reserve or the surrendered lands were set apart.

Exercise of powers conferred on band or council

- (3) Unless the context otherwise requires or this Act otherwise provides,
  - (a) a power conferred on a band shall be deemed not to be exercised unless it is exercised pursuant to the consent of a majority of the electors of the band; and
  - (b) a power conferred on the council of a band shall be deemed not to be exercised unless it is exercised pursuant to the consent of a majority of the councillors of the band present at a meeting of the council duly convened.

End of Document

# TAB 5

# Rough v. Cold Lake First Nations, [2016] A.J. No. 258

Alberta Judgments

Alberta Court of Queen's Bench

E.F. Macklin J.

Heard: March 10, 2016.

Oral judgment: March 10, 2016.

Released: March 16, 2016.

Docket: 1314 00302

Registry: St. Paul

[2016] A.J. No. 258 | 2016 ABQB 153 | 2016 CarswellAlta 471 | 264 A.C.W.S. (3d) 601 | 94 C.P.C. (7th) 226

Between Julie Rough, Respondent, and Cold Lake First Nations, Appellant

(51 paras.)

# **Case Summary**

Civil litigation — Civil procedure — Judgments and orders — Default judgments — Noting in default — Setting aside — Defence on the merits — Reasonable excuse for default — Appeal by the defendant Cold Lake First Nations (CLFN) from a Master's order dismissing CLFN's application to open up a noting in default allowed — Rough, a member of CLFN, sued CLFN for breach of contract — The statement of claim was not properly served and CLFN provided an adequate explanation as to why a statement of defence was not delivered — There was no delay on the part of CLFN in moving to set aside the noting in default and CLFN had a meritorious defence.

# Statutes, Regulations and Rules Cited:

Alberta Rules of Court, Rule 7.3(1)(c), Rule 9.15(3), Rule 11.4, Rule 11.14(1), Rule 11.28, Rule 11.29

Indian Act, RSC 1985, I-5, s. 2(1), s. 2(3)(b)

# Counsel

Patrick Stratton, for Cold Lake First Nations.

Hart R.Spencer, for Julie Rough.

## **Memorandum of Oral Decision**

# E.F. MACKLIN J. (orally)

### I. Introduction

- 1 On September 24, 2013, the Plaintiff, Julie Rough, issued a Statement of Claim against the Defendant, Cold Lake First Nations ("CLFN"). It was purportedly served on the Defendant on October 22, 2013. The Defendant was noted in default on November 1, 2013. An Application for Summary Judgment was filed on behalf of the Plaintiff on November 27, 2014. The Summary Judgment Application was delivered to CLFN on December 15, 2014.
- 2 Upon receiving the Summary Judgment Application on December 15, 2014, the Defendant contacted its counsel who, in turn, contacted counsel for the Plaintiff and advised that CLFN intended to defend the Plaintiff's claim.
- 3 The Defendant says that it was unaware of the Statement of Claim and Noting in Default until it was served with the Summary Judgment Application on December 15, 2014.
- 4 The Defendant brought an application on August 24, 2015 before the Master for an Order to open up the Noting in Default. The application was dismissed. The Defendant appeals from that Order of the Master.

# II. The Parties

- 5 The Plaintiff is a member of Cold Lake First Nations and has sued CLFN for breach of contract.
- 6 CLFN is a signatory to Treaty Six and a Band as defined in s 2(1) of the Indian Act, RSC 1985, I-5.

# III. Background

- 7 CLFN is a First Nations Band near the City of Cold Lake, Alberta. The Plaintiff is a member of CLFN. The Plaintiff alleges that on May 10, 2013, she entered into a one-year contract for janitorial services with the Defendant. While the Plaintiff did sign the "Contract for Janitorial Services", she purported to do so on behalf of English Bay Janitorial Services, a business licensed in 2013 to carry on business "within the limits of the City of Cold Lake".
- 8 The alleged contract was signed by one Daniel Paul, an employee of CLFN. CLFN has no record of a Band Council Resolution ("BCR") authorizing the contract and CLFN says that Paul did not have the authority to execute the contract on behalf of CLFN.
- 9 The Plaintiff says that the director of technical services for CLFN repudiated the contract on May 17,

- 2013 and provided the Plaintiff with a letter dated May 22, 2013 repudiating the contract. The Plaintiff had been paid for the first two pay periods and following the letter of May 22, 2013, the Defendant hired another company to perform the work allegedly contracted to the Plaintiff.
- 10 Counsel for the Plaintiff had forwarded a demand letter on June 7, 2013 and a further letter dated July 17, 2013 advising that they were instructed to initiate legal proceedings against CLFN.
- 11 On September 24, 2013, counsel for the Plaintiff issued a Statement of Claim against CLFN. The Plaintiff claims damages in her Statement of Claim for the balance of the one-year term of the alleged contract.
- 12 The Plaintiff says that the Statement of Claim was served on CLFN by registered mail addressed to "PO Box 1769, Cold Lake, Alberta T9M 1P4 (the "PO Box")". The PO Box is not located at the CLFN Band office. It is located in a Canada Post Office in the City of Cold Lake.
- 13 CLFN says that the Statement of Claim was never brought to the attention of either the Band Council or its lawyers. CLFN says that had it been brought to their attention, it would have been forwarded to their lawyers with instructions to defend.
- 14 CLFN was noted in default on November 1, 2013 but was not served with a copy of the Noting in Default. On November 27, 2014, more than one year later, the Plaintiff filed an application for summary judgment which was delivered to CLFN on December 15, 2014. CLFN says that prior to this date, it was unaware of the Statement of Claim and the noting in default.
- 15 On December 18, 2014, counsel for CLFN requested a copy of the Statement of Claim and proof of service. It received these documents on January 6, 2015. On January 29, 2015, counsel for CLFN sought the Plaintiff's consent to set aside the Noting in Default and on February 10, 2015 CLFN was advised that the Plaintiff would not consent.
- 16 On February 10, 2015, counsel for CLFN requested dates from counsel for the Plaintiff for an Application to Set Aside the Noting in Default. On March 10, 2015, the application was scheduled to be heard on the next available Chambers date which was August 24, 2015.
- 17 On August 24, 2015, the Application was heard by Master Schulz and dismissed. The Defendant appeals that Order.

#### IV. Issue

18 The sole issue to be determined is whether the noting in default should be set aside and CLFN permitted to file a Statement of Defence.

# V. Analysis

## A. Standard of Review

requested dates for the scheduling of an Application to set aside the Noting in Default. The application was scheduled on March 10, 2015.

- 38 In my view, there was no delay on the part of CLFN in moving to set aside the Noting in Default. It must also be noted that the Noting in Default occurred on November 1, 2013 and yet, the Plaintiff took no steps to proceed to judgment until she served the Summary Judgment Application on December 15, 2014, 13 1/2 months later. It is, indeed, curious that the Plaintiff did nothing about this claim for over one year. This failure speaks to the lack of prejudice to the Plaintiff should the Noting in Default be set aside. There is nothing to indicate that the Plaintiff would suffer any prejudice if the Noting in Default were set aside and the issues properly litigated.
- 39 I am satisfied that the Defendant has met this arm of the test and there was no delay in bringing an application to set aside the Noting in Default once it was aware that it had been noted in default.

# 3. Meritorious defence

- 40 In order to satisfy this arm of the test, the Defendant must show that if the facts it alleges are proven, it might well succeed. The Defendant must exhibit a genuine wish to defend the action and not merely an attempt to further delay or defeat a valid claim.
- 41 The Plaintiff says that she entered into a contract with CLFN for the daily cleaning of the CLFN buildings. The contract was executed by the Director of Technical Services and, the Plaintiff says, with the blessing of two Councillors, one of whom later became Chief. I would also note that the Plaintiff purported to execute the contract on behalf of English Bay Janitorial Services, a business whose 2013 Business License specifies that it is licensed to carry on the business of "residential and commercial janitorial services within the limits of the City of Cold Lake".
- 42 The Defendant says that a Band Council may enter into a commercial contract on behalf of the Band but they must exercise their discretion making authority in accordance with the *Indian Act* (*Telecom Leasing Canada* (*TLC*) *Ltd v Enoch Indian Band*[1994] 1 CNLR 206).
- 43 The Plaintiff says, however, that cleaning the buildings is an administrative decision within the realm of the Director's powers.
- 44 The Indian Act provides as follows:
  - 2 (3) Unless the context otherwise requires or this Act otherwise provides,
  - ...
    - (b) a power conferred on the council of a band shall be deemed not to be exercised unless it is exercised pursuant to the consent of a majority of the councillors of the band present at a meeting of the council duly convened.
- 45 It was held in the *Heron Seismic Services Ltd v Peepee Kisis Indian Band*, (1990) 74 DLR (4th) 308 that a valid Band council resolution, made by a quorum at a duly convened meeting, is required in order to bind a Band to a contract. In *Rath and Company v Stoney First Nation*, 2013 ABQB 255 it was held that

a Band was not the law firm's client due to an absence of resolution from the Band council. (The Plaintiff, however, says that the case is distinguishable as there was evidence before the Court that retaining counsel was a decision only made by Chief and Council and Justice Hawco held at para 7 that the tribal council makes decisions with respect to retention of lawyers, approval of legal fees, budgets and arguments to be made on legal matters. These are not administrative decisions under the authority of the tribal administration.) Further, in *W Downer Holdings Ltd v Red Pheasant First Nation*, 2012 SKQB 468, it was held that a settlement agreement signed by a majority of the Band councillors was invalid because there was no proper meeting of the council as contemplated by s 2 (3)(b) of the *Indian Act*. The failure to meet was fatal to the validity of the settlement agreement.

- 46 In his Affidavit, Mr. Janvier deposed that there was no record of a Band Council Resolution that either approved an agreement between CLFN and the Plaintiff or authorized Mr. Paul to enter into or approve an agreement between CLFN and the Plaintiff.
- 47 While the Plaintiff argues that all of the cases referred to are distinguishable, they do raise a meritorious defence and can only be resolved by a trial judge on the hearing of proper evidence. Further, there may well be an issue as to whether the Plaintiff herself was entitled to enter into a contract on behalf of a business licensed only to carry on that business in the City of Cold Lake. The question of whether these defences can succeed is a question for a trial judge and not one that can be determined definitively in an application to set aside a noting in default.
- 48 Finally, the Plaintiff is seeking judgment for the gross amount of the contract less the payments actually received. If this were the only defence, then the Defendant would be entitled to contest the amount under r 7.3(1)(c) of the Rules of Court. However, I believe that there is a meritorious defence on the substantive issue and accordingly, it is unnecessary to consider whether this would provide an adequate remedy for the Defendant.

# VI. Conclusion

- 49 On the basis of the evidence before this Court, I am satisfied that:
  - 1. The Defendant has provided an adequate explanation as to why a Statement of Defence was not delivered;
  - 2. There has been no delay on the part of the Defendant in applying to set aside the Noting in Default;
  - 3. The Defendant has a meritorious defence, that is, a triable issue of fact or law.
- 50 Accordingly, I find that the decision of Master Schulz was not correct and the appeal by the Defendant is allowed. The Noting in Default shall be set aside and the Defendant shall have 14 days from the setting aside within which to file a Statement of Defence.
- 51 The Plaintiff is entitled to all thrown away costs including the costs of the Application before the Master and this Application as well as any travel costs for that Application and this one if any were incurred.

# TAB 6

December 10, 2009

Coram: Binnie, Fish and Charron JJ.

Le 10 décembre 2009

Coram: Les juges Binnie, Fish et Charron

## BETWEEN:

Sawridge Band

**Applicant** 

- and -

Her Majesty the Queen, Congress of Aboriginal Peoples, Native Council of Canada (Alberta), Non-Status Indian Association of Alberta and Native Women's Association of Canada

Respondents

#### AND BETWEEN:

Tsuu T'ina First Nation (formerly the Sarcee Indian Band)

Applicant

- and -

**ENTRE:** 

Sawridge Band

Demanderesse

- et -

Sa Majesté la Reine, Congress of Aboriginal Peoples, Native Council of Canada (Alberta), Non-Status Indian Association of Alberta et Native Women's Association of Canada

Intimés

#### ET ENTRE:

Tsuu T'ina First Nation (formerly the Sarcee Indian Band)

Demanderesse

- et -

Her Majesty the Queen, Congress of Aboriginal Peoples, Native Council of Canada (Alberta), Non-Status Indian Association of Alberta and Native Women's Association of Canada

Respondents

Sa Majesté la Reine, Congress of Aboriginal Peoples, Native Council of Canada (Alberta), Non-Status Indian Association of Alberta et Native Women's Association of Canada

Intimés

No. 33219

# **JUDGMENT**

The application for leave to appeal from the judgment of the Federal Court of Appeal, Numbers A-112-08 and A-154-08, 2009 FCA 123, dated April 21, 2009, is dismissed with costs to the respondents.

# **JUGEMENT**

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéros A-112-08 et A-154-08, 2009 CAF 123, daté du 21 avril 2009, est rejetée avec dépens en faveur des intimés.

J.S.C.C. J.C.S.C.

# TAB 7

# UAlberta Pro-Life v. Governors of the University of Alberta, [2018] A.J. No. 1257

Alberta Judgments

Alberta Court of Appeal F.L. Schutz J.A.

Heard: October 23, 2018.

Judgment: October 29, 2018.

Docket: 1703-0283-AC

Registry: Edmonton

# [2018] A.J. No. 1257 | 2018 ABCA 350

Between UAlberta Pro-Life, Amberlee Nicol and Cameron Wilson, Appellants, and Governors of the University of Alberta, Respondent (on appeal and motion), and British Columbia Civil Liberties Association, Applicant

(35 paras.)

# **Case Summary**

Civil litigation — Civil procedure — Parties — Intervenors — Charter litigation — Application by British Columbia Civil Liberties Association for leave to intervene allowed — Applicant sought to intervene in appeal by University pro-life student association that claimed university's refusal to address security complaint and requirement to pay costs of security as condition of approval for campus event breached right to freedom of expression — Court granted leave on issues of core public function of universities in providing education, nuances of recently clarified DorÚ/Loyola analytical framework, and scope of rights at issue in context of new DorÚ/Loyola test.

Constitutional law — Constitutional proceedings — Practice and procedure — Parties — Application by British Columbia Civil Liberties Association for leave to intervene allowed — Applicant sought to intervene in appeal by University pro-life student association that claimed university's refusal to address security complaint and requirement to pay costs of security as condition of approval for campus event breached right to freedom of expression — Court granted leave on issues of core public function of universities in providing education, nuances of recently clarified DorÚ/Loyola analytical framework, and scope of rights at issue in context of new DorÚ/Loyola test.

Application by the British Columbia Civil Liberties Association (BCCLA) for leave to intervene. The appellants represented a University of Alberta pro-life student association. In 2015, they held a campus event that attracted a large number of people who opposed the appellants' views. Campus security monitored the event and set up designated areas for opponents to the appellants' viewpoint. The appellants initiated a complaint with the University's security unit alleging that approximately 100 individuals did not stay in the designated area, thereby violating the University's Code of Student

#### UAlberta Pro-Life v. Governors of the University of Alberta, [2018] A.J. No. 1257

Behaviour. The Director of campus security declined to proceed with the appellants' complaint. The appellants' application for judicial review was dismissed. In 2016, the appellants sought approval to hold another event. The University granted approval, subject to the condition that the appellants pay the estimated \$17,500 costs of security. The appellants sought judicial review on the basis the security costs decision by the University breached their freedom of expression protected by s. 2(b) of the Charter. In dismissing the application, the chambers judge declined to determine the issue of whether the Charter applied to universities on the basis that the University had voluntarily assumed responsibility for considering the appellants' freedom of expression in this instance. The BCCLA sought to intervene in that particular aspect of the appeal.

HELD: Application allowed.

The BCCLA offered special expertise in the area of Charter rights that could be of assistance to the Court in its deliberations. In particular, the BCCLA offered expertise on the issue of the core public function of universities in providing education, the nuances of the recently clarified DorÚ/Loyola analytical framework, and in identifying the scope of the s. 2(b) Charter rights at issue in the context of the new DorÚ/Loyola test. The intervenor's desire to make submissions on whether Pridgen was distinguishable from the present case would impermissibly widen the scope of the appeal. Leave to intervene was accordingly granted with directions regarding submissions.

# Statutes, Regulations and Rules Cited:

Alberta Rules of Court, Alta Reg. 124/2010, Rule 14.37(2)(e), Rule 14.58, Rule 14.58(3)

Canadian Charter of Rights and Freedoms, 1982, s. 2(b), s. 2(c), s. 2(d)

Post-Secondary Learning Act, SA 2003, c P-19.5,

#### Appeal From:

Application for Permission to Intervene.

# Counsel

R.J. Cameron, for UAlberta Pro-Life, Amberlee Nicol, Cameron Wilson.

M.A. Woodley/P.T. Buijs, for Governors of the University of Alberta.

N.J. Whitling, for British Columbia Civil Liberties Association.

#### Reasons for Decision

# F.L. SCHUTZ J.A.

#### Introduction

- 1 The British Columbia Civil Liberties Association (the "BCCLA") seeks leave to intervene in the appeal of one of two decisions under appeal from: *UAlberta Pro-Life v Governors of the University of Alberta*, 2017 ABQB 610; namely, the chambers judge's judicial review decision referred to as the "Security Costs Decision".
- 2 I will review relevant background only to the extent needed to put the proposed intervenor's application into context.
- 3 The appellants represent an approved University of Alberta student association. In early 2015, the appellants held an event on campus. The event attracted a large number of people who held views contrary to those of the appellants. University of Alberta Protective Services, the University's campus security unit, monitored the event and decided to set up a designated area to which opponents of the appellants' event and displays would be confined. Persons opposed did not remain in the designated area; instead, they positioned themselves in front of the appellants' displays so as to obstruct the view of passers-by and also verbalized their opposition to the appellants' messaging. Subsequently, the appellants initiated a complaint with Protective Services, alleging that approximately 100 people who had not stayed in the designated area had violated the University Code of Student Behaviour (the "Code"). The chambers judge dismissed the appellants' judicial review of the Discipline Officer's decision that sustained the Protective Services' Director's decision not to proceed with the appellants' complaint. The proposed intervenor is not seeking to intervene in this aspect of the appeal.
- 4 In January 2016, the appellants sought appropriate approval from the University to hold a second event that would be similar in format to the earlier one. The University told the appellants that they were to work with Protective Services on a security assessment for the event. The appellants did so. The security assessment concluded that costs of security for the event would total approximately \$17,500. The University approved the event, but subject to the condition that the appellants pay the actual costs of security, including an initial \$9000 deposit ("Security Costs Decision"). The appellants sought judicial review of the Security Costs Decision.
- 5 In essence, the appellants contended that the Security Costs Decision unjustifiably infringed their freedom of expression guaranteed by s 2(b) of the *Charter*, and its imposition effectively prevented the appellants from fully participating in campus life on an equal footing with other students. The appellants further argued that the University's decision was unreasonable because it framed the appellants' event as the cause of the security concerns, rather than the conduct of the Code-violating opponents of their event. In response, the University argued that the *Charter* did not apply to it and that the common law did not require the University to consider freedom of expression.

6 In dismissing the appellants' judicial review application of the Security Costs Decision, the chambers judge decided there was no need to decide whether the *Charter* applied to universities, on the basis that the University ". . . voluntarily assumed responsibility for considering freedom of expression in this instance": *ibid* at para 46. In apparent support of this view, the chambers judge pointed to statements made in the Code, as well as a statement released by the University President that spoke of the University's respect for students' freedom of expression.

7 The British Columbia Civil Liberties Association seeks leave to intervene only in respect of this aspect of the appeal.

#### Test for Leave to Intervene

- 8 Rules 14.37(2)(e) and 14.58 of the Alberta Rules of Court, Alta Reg 124/2010 authorize a single judge to consider an application to intervene and to impose conditions. As an exercise of discretion, intervenor status should be granted sparingly: Telus Communications Inc v Telecommunications Workers Union, 2006 ABCA 297 at para 4, 401 AR 57 [Telus]; Pedersen v Alberta, 2008 ABCA 192 at para 4, 432 AR 219 [Pedersen].
- 9 Generally, the Court must first consider the subject matter of the proceeding and then determine the proposed intervenor's interest in that subject matter: *Papaschase Indian Band (Descendants of)* v *Canada (Attorney General)*, 2005 ABCA 320 at para 5, 380 AR 301 [*Papaschase*]. A proposed intervenor's interest in the subject matter is determined by assessing the following considerations:
  - a. whether the proposed intervenor would be directly and "specially" affected by the outcome of the appeal or,
  - b. whether the proposed intervenor has special expertise or a unique perspective relating to the subject matter of the appeal that will assist the Court in its deliberations.

Papaschase at para 2; Telus at para 4; Edmonton (City) v Edmonton (Subdivision and Development Appeal Board), 2014 ABCA 340 at para 8, 584 AR 255 [Edmonton (City)].

- 10 The following questions are also relevant to the consideration of whether an intervenor application ought to be granted:
  - 1. Is the presence of the intervenor necessary for the court to properly decide the matter?
  - 2. Might the intervenor's interest in the proceedings not be fully protected by the parties?
  - 3. Will the intervention unduly delay the proceedings?
    - 4. Will there possibly be prejudice to the parties if intervention is granted?
    - 5. Will intervention widen the dispute between the parties?
    - 6. Will the intervention transform the court into a political arena?

Pedersen at para 3; Edmonton (City) at paras 8-14; Stewart Estate (Re), 2014 ABCA 222 at para 5, 577 AR 57; Styles v Canadian Association of Counsel for Employers, 2016 ABCA 218 at paras 13-15.

11 Further, if intervenor status is granted, an intervenor may not raise or argue issues not raised by the parties to the appeal unless otherwise ordered: Rule 14.58(3). Finally, a proposed intervenor should define the question on which they wish to intervene with particularity: *R v Neve*, 1996 ABCA 242 at para 16, 184 AR 359.

# **Analysis**

- 12 The BCCLA concedes that it would not be "specially affected" by the outcome of this appeal and that its interest lies in "the proper development of the law raised by the issues on appeal. . .". The BCCLA submits that it possesses special expertise in the arena of civil liberties, especially as it pertains to freedom of expression.
- 13 BCCLA senior counsel swore an affidavit in support of this application, in which it is explained that BCCLA has expertise in free expression and the application of the *Charter* to universities, stemming from litigating two freedom of expression cases against the University of Victoria. Further, more generally, the BCCLA has an extensive history of participating in s 2(b) *Charter* cases. The affiant confirmed the BCCLA's experience and competence as an intervenor, having intervened dozens of times at the Supreme Court of Canada and in other courts on issues that engage civil liberties.
- 14 The respondent University opposes the proposed intervention. The University argues that the BCCLA is not "specially affected" nor does it possess special expertise or insight necessary for this Court to decide the appeal. The appellants support the BCCLA's application.
- 15 Concerns about unduly delaying the proceedings, or prejudice, or any concern that the BCCLA would transform this Court into a political arena were not strongly pressed. Any concerns about timeliness, or widening of the issues or *lis* between the parties might best be addressed by conditions, if necessary. Thus, the crux of the matter is whether the BCCLA can offer a special expertise in the area of *Charter* rights that may be of assistance to the Court in its deliberations.
- 16 If granted intervenor status, the BCCLA proposes to make the following four submissions:
  - a. Universities perform the core public function of providing education;
  - b. The recent Supreme Court decisions in Loyola High School v Quebec (Attorney General), 2015 SCC 12 [Loyola], Law Society of British Columbia v Trinity Western University, 2018 SCC 32 [TWU 1], and Trinity Western University v Law Society of Upper Canada, 2018 SCC 33 [TWU 2], have altered the Doré v Barreau du Québec, 2012 SCC 12, [2012] 1 SCR 395 [Doré] analysis;
  - c. The scope of the ss 2(b), (c) and (d) *Charter* rights at issue must be identified, considered and afforded substantial weight in light of the new *Doré/Loyola* test;